DOCKET

No. 86-6124-CSX Title: George S. Bennett, Petitioner
Status: GRANTED v.
Arkansas

Docketed: Court: Supreme Court of Arkansas
December 26, 1986

Counsel for petitioner: Carpenter,Thomas M.

Counsel for respondent: Miller,Clint

Entry	Date	Note	Proceedings and Orders
1	Dec 26 1986	G	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
3	Feb 12 1987	P	Response requested -- JPS. (Due March 14, 1987)
4	Mar 9 1987		Order granting extension of time to and including April 14, 1987, to file respondent's brief in opposition.
5	Apr 11 1987		Brief of respondent Arkansas in opposition filed.
6	Apr 16 1987		DISTRIBUTED. May 1, 1987
7	May 4 1987	P	The Solicitor General is invited to file a brief in this case expressing the views of the United States.
8	Sep 22 1987		Brief amicus curiae of United States filed.
9	Sep 24 1987		REDISTRIBUTED. October 9, 1987
11	Oct 13 1987		Petition GRANTED.
			**********
12	Oct 19 1987	G	Motion of petitioner for appointment of counsel filed.
13	Oct 20 1987		DISTRIBUTED. Oct. 30, 1987 Conf. (Above motion for appointment of counsel).
14	Nov 2 1987		Motion for appointment of counsel GRANTED and it is ordered that Thomas M. Carpenter, Esquire, of Little Rock, Arkansas, is appointed to serve as counsel for the petitioner in this case.
17	Nov 27 1987		Brief amicus curiae of United States filed.
16	Nov 30 1987		Joint appendix filed.
18	Dec 3 1987		Brief amicus curiae of Lawrence McDowell filed.
22	Dec 4 1987		Brief of petitioner George S. Bennett filed.
21	Dec 14 1987		Order extending time to file brief of respondent on the merits until January 19, 1988.
24	Dec 18 1987	G	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
23	Dec 24 1987		Record filed.
		*	Certified original record, 1 volume, received.
25	Jan 5 1988		SET FOR ARGUMENT. Wednesday, March 2, 1988. (3rd case). (1 hour).
26	Jan 11 1988		Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
28	Jan 19 1988	X	Brief of respondent Arkansas filed.
27	Jan 20 1988		CIRCULATED.
29	Mar 2 1988		ARGUED.

PETITION FOR WRIT OF CERTIORARI

No. 86-6124

RECEIVED
DEC 30 1986
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

October Term, 1986

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GEORGE BENNETT and EVERETT SHELTON,

Petitioners,

vs.

STATE OF ARKANSAS,

Respondent.

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ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

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PETITION FOR WRIT OF CERTIORARI

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Thomas M. Carpenter, Esq.
P. O. Box 390
Little Rock, Arkansas 72203-0390
(501) 371-4527

Counsel for Petitioners

QUESTION PRESENTED

Whether a state statute requiring prisoners to pay part of the costs of incarcertaion and permits the attachment of Social Security benefits in violation of 42 U.S.C. § 407 and Veteran's Administration benefits in violation of 38 U.S.C. § 3101 violates the Supremacy Clause in Article VI, Clause 2 of the United States Constitution?

LIST OF PARTIES

The petitioners are:

George E. Bennett

Everett F. Shelton

At trial, Roosevelt Johnson and Cleotis Holmes were named as defendants. However, the State dismissed the action against Holmes when it could not find any estate. The action against Johnson was dismissed when Johnson died pending appeal.

The respondent is the State of Arkansas appearing through the Honorable J. Steven Clark, Attorney General.

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QUESTION PRESENTED.....i

Whether a state statute requiring prisoners to pay part of the costs of incarceration and permits the attachment of Social Security benefits in violation of 42 U.S.C. § 407 and Veteran's Administration benefits in violation of 38 U.S.C. § 3101 violates the Supremacy Clause in Article VI, Clause 2 of the United States Constitution?

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No.....

In The
Supreme Court of the United States

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George E. Bennett and Everett E. Shelton,

Petitioners,

v.

State of Arkansas,

Respondent.

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On Petition for Writ of Certiorari
to the Supreme Court of Arkansas

The petitioners, George E. Bennett and Everett E. Shelton, pray that this Court grant this petition to review a decision of the Supreme Court of Arkansas.

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OPINIONS BELOW

The opinion of the Arkansas Supreme Court is contained in the Appendix. The official citation to the opinion is Bennett v. State, 290 Ark. 47, 716 S.W.2d 755 (1986).

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JURISDICTION

The judgment of the Supreme Court of Arkansas was

entered on September 29, 1986. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(2)(3). Petitioners believe that the Arkansas statutes in question [Ark.Stat.Ann. §§ 46-1701, et seq (Supp. 1985)] are repugnant to laws of the United States, but the state courts have upheld the validity of the state statute.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI, cl. 2 of the United States Constitution provides in pertinent part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

38 U.S.C. § 3101 provides in pertinent part:

> Payments of benefits due or to become due under any law administered by the Veteran's Administration...shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiay....

42 U.S.C. § 407 provides in pertinent part:

> The right of any person to any future payment under this title shall not be...subject to...levy, attachment, garnishment, or other legal process....

Ark.Stat.Ann. § 46-1702(d) (Supp. 1985) provides in pertinent part:

> "Estate" shall mean any properties...belonging to or due an inmate confined to an institution of the Department of Correction, including... Social Security...or...pensions or retirement benefits, or from [income] from any source whatsoever.

Ark.Stat.Ann. § 46-1704(a) (Supp. 1985) provides in pertinent part:

> Whenever it shall be found that any person has been admitted to a penal facility of the Department of Correction as a prisoner, the Attorney General...shall, if such person or prisoner be possessed of any estate...petition the circuit court of the county from which said person was sentenced, stating...that said estate may be subjected to the payment to the State of the expenses paid and to be paid by it on behalf of said person as a prisoner....

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STATEMENT OF THE CASE

George E. Bennett ("Bennett") and Everett E. Shelton ("Shelton") were incarcerated in the Arkansas Department of Correction. Bennett was imprisoned at the Diagnostic Unit in Pine Bluff, Arkansas. Shelton was imprisoned at the Cummins Unit in Grady, Arkansas. Both Bennett and Shelton received monthly pensions from the federal government.

Bennett received Social Security pension benefits. These payments were based upon his work experience. He was incarcerated as a result of a 21 year sentence for second degree murder. He had been denied parole on several occassions, although his prison record was exemplary.

Shelton received Veteran's Administration disability benefits. He was imprisoned on a 15 year sentence for

theft of property. He, too, had been denied parole on at least two occasions at the time this lawsuit arose.

In 1981 the Arkansas legislature passed the Inmate Care and Custody Reimbursement Act. Act 715, 1981 Ark.Acts [codified as Ark.Stat.Ann. §§ 46-4701, et seq (Supp. 1985)]. Under this Act the Attorney General, or a prosecuting attorney, is authorized to petition the circuit court in which a prisoner was sentenced and ask that the prisoner's estate be seized to help reimburse the State for the cost of imprisonment. Since both Bennett and Shelton were sentenced in Pulaski County, Arkansas, the suits were filed there.

In defining an inmate's estate, the Act expressly permits the State to attach social security benefits. Also included in the definition of "estate," are pension benefits, and income from any source whatsoever. Because Bennett and Shelton had several hundred dollars in Social Security or Veteran's Administration benefits, the State attached their accounts pursuant to these statutes.

Bennett and Shelton -- and two other inmates who were subsequently dimissed from this litigation for other reasons -- were not allowed counsel at first. However, the Court ultimately appointed counsel and permitted payment of fees from the attached funds.

A challenge to the constitutionality of the statute was raised. Specifically, Bennett and Shelton contended in the trial court that the nonattachment provisions of 38 U.S.C. § 3101 and 42 U.S.C. § 407 precluded the State from collecting social security or veteran's

administration benefits. The parties stipulated that the inmates' funds were noncommingled federal benefits.

The trial court upheld this challenge to the statute. The Arkansas Supreme Court affirmed. In its holding the Court said that despite the language of the exemption statutes there was an implied exemption that permitted the seizure of these funds.

This opinion was rendered on September 29, 1986. On October 27, 1986, the Supreme Court of Arkansas stayed the mandate pending the filing of this petition.

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REASON FOR GRANTING THE WRIT

This Court needs to establish that there are no exemptions from federal nonattachment statutes unless and until the Congress creates such an exemption.

The issue in this case is whether the Supremacy Clause of the United States Constitution can be subverted by state appellate courts finding "implied exemptions," to federal law. Bennett v. State, 290 Ark. 47,49, 716 S.W.2d 755,756 (1986). This case presents the second time this term this Court has been asked to reverse an Arkansas appellate court for ignoring this constitutional provision. See Rose v. Arkansas State Police, ___U.S.__, 107 S.Ct. 334 (1986). The question of reimbursement of costs of care by inmates -- or patients -- however, is not limited to Arkansas. Dept. of Health

v. Davis 616 F.2d 828 (5th Cir. 1980); Dept. of Correction v. Brown 125 Mich App 620 337 N W 2d 23 (1983). Because of the seriousness of the issue, and the nationwide impact this decision will have. this Court should grant the writ.

1. Any state law that is in conflict with, or interferes with, an act of Congress is invalidated by the Supremacy Clause of the United States Constitution. Art VI cl 2 U.S.Const.; Rose v. Arkansas State Police, 107 S.Ct. at 335; Hayfield Northern R Co. v Chicago & N.W. Transp. Co. 467 U S 622 (1984); Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824). This fact is particularly true where the conflict between the state statutes and the federal law is clear on its face. Rose v. Arkansas State Police. 107 S Ct. at 335 The Arkansas statute in question is, on its face, in clear conflict with the federal nonattachment statutes that protect social security and veteran's administration benefits.

The Arkansas statute permits the State to attempt to obtain partial reimbursement for the costs of incarceration from those inmates that have some kind of "estate." Ark.Stat.Ann. §§ 46-1701, et seq (Supp. 1985). An "estate" is defined to include any income a prisoner has from any source. It expressly includes social security benefits and pension funds. Ark Stat Ann. § 46-1702(d) (Supp. 1985). The Arkansas statute is similar to one adopted in Michigan. M S.A. §§ 28.1701, et seq.

Since the social security nonattachment statute precludes any kind of legal process to be used to seize

social security benefits, there is no doubt that it conflicts with the Arkansas statute. Compare 42 U.S.C. § 407 with Ark.Stat.Ann. § 46-4701(d) (Supp. 1985). Similarly, the state statute conflicts with the non-attachment language for veteran's administration benefits. 38 U.S.C. § 3101.

Yet despite this clear conflict both the Arkansas courts and the Michigan courts have determined that the state statute prevails. Bennett v. State; Department of Correction v. Brown, 125 Mich.App. 620, 337 N.W.2d 23 (1983); Auditor General v. Olezniczak, 302 Mich. 336, 4 N.W.2d 679 (1942); Auditor General v. Hall, 300 Mich. 215, 1 N.W.2d 516 (1942).

Because the Supremacy Clause invalidates state statutes that from their own language conflict with federal statutes, this Court should grant the writ in this case and reverse the decision of the Arkansas Supreme Court. Rose v. Arkansas State Police, 107 S.Ct. at 335.

2. A second reason the Court should grant this writ is to establish that there are no "implied exemptions," under federal nonattachment statutes. As the Court has noted so often previously, only the Congress can change the effect of these nonattachment statutes. Hisquierdo v. Hisquierdo, 439 U.S. 575 (1979); Philpott v. Essex County Welfare Board, 409 U.S. 413 (1973). Yet, the Arkansas Supreme Court used this "implied exemption," rationale in upholding the statute in question

> Appellants contend that the State act is in conflict with the federal acts....there is no conflict because the federal statutes contain an implied exemption to the exemption from legal process when the State provides for the care and maintenance of a beneficiary of social security or veterans' funds. Bennett v. State, 290 Ark. at 49, 716 S.W.2d at 756. [Emphasis added]

There is no implied exemption in the federal statute. It is clear that absent express constitutional approval, these funds are not to be subjected to any kind of legal process whatsoever.

Yet, the Arkansas Supreme Court found such an exemption because the State is providing care to the inmates of the penitentiaries. The rationale is that the State is acting in loco parentis and, therefore, is entitled to take the "child's," money and spend it as it sees fit.

This argument ignores two important points. First, the federal statutes do not provide any different standard that permits persons acting "in loco parentis" to attach these federal pensions. Second, the Congress made the decision that these funds were not subject to being attached and only the Congress can change that provision. Accord Hisquierdo v. Hisquierdo, 439 U.S. at 587.

Because the Arkansas Supreme Court has created an illusory rationale for ignoring the evident tension between federal and state law, and has also ignored the fact the Supremacy Clause necessitates invalidation of this statute, this Court should grant certiorari and reverse this decision.

3. The implications of this case are significant. As pointed out above, other jurisdictions are beginning, pursuant to state statute, to attack federally protected benefits. It must be remembered that these benefits are protected, in large part, because the Congress can totally abolish them at any item by congressional edict. Hisquierdo v. Hisquierdo, 439 U.S. at 575.

Because these funds are so vulnerable they are protected. But the facts of this case, and Davis, suggest an even more problemaatic concern. The persons being subjected to these state laws are particularly vulnerable to the excesses of state creditors because they are effectively without means to adequately seek redress. Neither Davis, nor the Michigan cases, have ever been reviewed by this Court.

Every time a jurisdiction denies relief to a federal pensioner another jurisdiction views itself as free to attack a similar class of beneficiaries. Hence, the Michigan courts were relied upon by the Fifth Circuit, which in turn was relied upon by both the Michigan courts and the Arkansas courts. As the requirements for funding state prisons or hospitals grows, more federal pensioners will be subjected to an ever increasing number of state statutes designed to circumvent federal statutes.

While the goal of the states may be acceptable, the means is totally unacceptable. The Congress passed these exemption statutes and only the Congress can amend these statutes. But, as long as decisions such as Bennett are permitted to circumvent the constitutional process, then

disregard for the supremacy of federal law will continue and state statutes will be approved that are repugnant to or federal form of government. This fact is particularly true when the objects of these statutes are less able to protect their interests.

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CONCLUSION

The state statute in this case is in clear conflict with federal law. Under the Supremacy Clause of the United States Constitution, the state statute should fall. However, the Arkansas Supreme Court, following the lead of the Michigan appellate courts and the Fifth Circuit, has created an artificial rationale for ignoring the United States Constitution. As this Court did in Rose v. Arkansas State Police, it should grant the petition in this matter and reverse this decision of the Arkansas Supreme Court.

Respectfully submitted,

Thomas M. Carpenter, Esq.
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Little Rock, Arkansas 72203
(501) 371-4527

Counsel for Petitioners

A P P E N D I X

Appendix 1:

Bennett v. State, 290 Ark. 47, 716 S.W.2d 755 (1986).1

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In The
Supreme Court of the United States

October Term, 1986

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George E. Bennett and Everett E. Shelton,

Petitioners,

v.

State of Arkansas,

Respondent.

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SUPREME COURT, U.S.

MOTION TO PROCEED ON CERTIORARI IN FORMA PAUPERIS

I, Thomas M. Carpenter, a member of the bar of this Court, have prepared this motion on behalf of the petitioners herein. The petitioners, George E. Bennett and Everett E. Shelton, ask leave to file the attached petition for writ of certiorari without prepayment of costs and to proceed in forma pauperis. Petitioner George E. Bennett has filed his affidavit in support of this motion. Petitioner Everett E. Shelton cannot be found, but an order showing that counsel was paid below only from the Veteran's Administration benefits is attached.

Thomas M. Carpenter, Esq.
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Counsel for Petitioners

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SUPREME COURT, U.S.

Affidavit In Support of Motion to Proceed On Certiorari In Forma Pauperis

I, George E. Bennett, being first duly sworn, depose and say that in support of my motion to proceed in forma pauperis on certiorari without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor.

I further swear that the responses which I have made to the questions below relating to my ability to pay the costs of prosecuting the certiorari petition are true.

1. I am not presently employed. No

2. I have not received, within the last twelve months, any income from a business, profession, or other form of self-employment No

3. I do not have a checking account. My exclusive sources of income are the social security and SSI benefits that I receive. I receive a total of $ 275.00 in monthly benefits. No

4. I do not own any real estate, stocks, bonds, notes, automobiles, or other valuable property. No

5. No persons are dependent on me for support. But, I share living expenses with my brother Hozia Bennett. These expenses include rent, utilties, and food payments. No

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

George E. Bennett
George F. Bennett

STATE OF ARKANSAS)
COUNTY OF PULASKI)

SUBSCRIBED AND SWORN to before me this 26th day of December, 1986.

Sherry Harrison
Notary Public

My Commission Expires:

(Seal)

July 24, 1992

OPPOSITION

BRIEF

(3)

86-6124

Supreme Court, U.S.
FILED
APR 11 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the

Supreme Court of the United States

October Term, 1986

George Bennett and Everett Shelton ..... *Petitioners*

V.

State of Arkansas ..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

RESPONDENT STATE OF ARKANSAS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

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86-6124

In the

Supreme Court of the United States

October Term, 1986

George Bennett and Everett Shelton ..... *Petitioners*

V.

State of Arkansas ..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI
TO THE ARKANSAS SUPREME COURT

RESPONDENT STATE OF ARKANSAS' BRIEF
IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI TO THE
ARKANSAS SUPREME COURT

REASON FOR DENYING THE PETITION FOR CERTIORARI

I.

ARKANSAS STATUTES ANNOTATED §§ 46-1701-07 (SUPP. 1985) ARE NOT IN CONFLICT WITH 42 U.S.C. § 407 OR WITH 38 U.S.C. § 3101(a) AND, THEREFORE, DO NOT VIOLATE THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION, ARTICLE VI, CLAUSE TWO.

The federal government, pursuant to statutes passed by the United States Congress, provides monetary benefits to certain recipients through the Social Security program and through the Veterans Administration. These benefits

are provided to recipients in order that they may support and maintain themselves. Federal statutes establishing both benefit programs contain nonattachment clauses that protect the benefits from seizure or levy.

Petitioners Bennett and Shelton are two such recipients. Both were imprisoned for a time in the Arkansas Department of Correction. While Bennett and Shelton were incarcerated, the State, acting through the Department of Correction, provided food, shelter, clothing and medical care for them. Bennett and Shelton do not contest this fact.

In order to reimburse itself for providing care and maintenance for Bennett and Shelton while they were incarcerated, the State, pursuant to the state statutes at issue, seized Veterans Administration benefits and Social Security benefits that were being paid to Bennett and Shelton. The state statutes at issue empowered Arkansas to reimburse itself for the provision of care and maintenance to prison inmates by seizing funds from inmate estates. "Estate" is defined by the pertinent state statutes to include federal benefits. Bennett and Shelton do not contend that the State misapplied the seized funds.

Respondent respectfully submits that Arkansas' seizure of the funds to reimburse itself for the provision of care and maintenance to Bennett and Shelton was entirely consistent with the purpose of the federal statutes establishing the benefit programs. The Arkansas Supreme Court's description of the absence of a conflict between the federal statutes setting up the benefit programs and the Arkansas statutes permitting seizure of federal funds as an "implied exception" is simply an unfortunate choice of words. For this Court to attend to the petitioner's argument on this point would be to elevate form over substance. In interpreting statutes, this Court has held that the spirit and reason of a statute govern its letter. *Sorrells v. United States*, 287 U.S. 435 (1932); *Ozawa v. United States*, 260 U.S. 178 (1922); and *American Security and Trust Co. v. District*

of Columbia, 224 U.S. 491 (1912). Because Arkansas' statutes authorizing seizure of the funds at issue are in keeping with the purpose of the federal statutes establishing the benefit programs, the Supremacy Clause of the United States Constitution is not offended.

CONCLUSION

THEREFORE, because the federal statutes at issue and the Arkansas statutes at issue are not in conflict, respondent respectfully requests that this Honorable Court deny petitioners Bennett and Shelton's petition for a writ of certiorari to the Supreme Court of Arkansas.

Respectfully submitted,

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Attorney General of Arkansas

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AMICUS CURIAE

BRIEF

No. 86-6124

FILED
SEP 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1987

GEORGE BENNETT AND EVERETT SHELTON, PETITIONERS

v.

STATE OF ARKANSAS

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

CHARLES FRIED
Solicitor General

RICHARD K. WILLARD
Assistant Attorney General

ALBERT G. LAUBER, JR.
Deputy Solicitor General

CHARLES A. ROTHFELD
Assistant to the Solicitor General

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Department of Justice
Washington, D.C. 20530
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QUESTION PRESENTED

Whether 42 U.S.C. (Supp. III) 407(a) and 38 U.S.C. 3101(a), which preclude the attachment of Social Security benefits and veterans' benefits respectively, bar a State's attempt to attach those benefits as reimbursement for costs incurred in maintaining the recipient in custody.

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In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 86-6124

GEORGE BENNETT AND EVERETT SHELTON, PETITIONERS

v.

STATE OF ARKANSAS

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

1. Petitioner George Bennett receives $275 per month in Social Security retirement benefits. Petitioner Everett Shelton receives $626 per month in Veterans Administration (VA) disability benefits for a psychiatric disorder that is rated 70% disabling. In 1983, both petitioners were confined in Arkansas state prisons, carrying out sentences for felonies committed some years earlier.[1]

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[1] We are informed by the Department of Health and Human Services that Bennett was sentenced in 1973 to 21 years incarceration for second-degree murder, and that he was released from prison on December 1, 1984. We are informed by the VA that Shelton was sentenced in 1980 to 15 years incarceration for theft, and that he was released from prison in January 1985. Petitioners' Motion to Proceed in Forma Pauperis states (at 1) that Shelton now "cannot be found." The attachment order issued by the Arkansas state courts remains outstanding against both petitioners' property, however.

The State of Arkansas in 1983 commenced this action against petitioners in state court, seeking to attach petitioners' federal benefits as reimbursement for the costs of their incarceration. In bringing the action, the State proceeded under the State Prison Inmate Care and Custody Reimbursement Act, Ark. Stat. Ann. §§ 46-1701 *et seq.* (Supp. 1985). That law directs the Attorney General of Arkansas, in any case where a person "has been admitted to a penal facility of the Department of Correction as a prisoner," to attach the prisoner's "estate" as reimbursement for "the expenses paid and to be paid by it on behalf of said person as a prisoner." *Id.* § 46-1704(a). The statute defines this attachable "estate" to mean "any properties, tangible or intangible, real or personal, belonging to or due an inmate confined to an institution of the Department of Correction including income or payments to such inmate from Social Security, previously earned salary or wages, bonuses, annuities, pensions or retirement benefits, or from any source whatsoever." *Id.* § 46-1702(d).

Bennett opposed the State's claim, arguing that its attempt to attach his Social Security benefits was foreclosed by 42 U.S.C. (Supp. III) 407(a). That section provides that "none of the moneys paid or payable * * * under [the Social Security Act] shall be subject to execution, levy, attachment, garnishment, or other legal process * * *." Similarly, Shelton contended that the State's attempt to attach his VA benefits was inconsistent with 38 U.S.C. 3101(a), which provides that such benefits "shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." The state trial court rejected these contentions, holding that petitioners' federal benefits were subject to the Arkansas reimbursement statute.[2] Employing

[2] The parties stipulated that the funds in question consist of non-commingled federal benefits. See Pet. 5. Thus, the State acknowledges that it "seized Veterans Administration benefits and Social Security benefits that were being paid to [petitioners]." Br. in Opp. 2.

a formula provided in the Arkansas law, the trial court accordingly directed that a portion of petitioners' benefits be paid to the State. Pet. App. 2.[3]

The Supreme Court of Arkansas affirmed, one Justice dissenting (Pet. App. 1-8). The court acknowledged that "the federal acts would clearly prevail under the Supremacy Clause" if the federal and state statutes were "in conflict" (*id.* at 2). But the court held that "there is no conflict [here] because the federal statutes contain an implied exception to the exemption from legal process when the State provides for the care and maintenance of a beneficiary of social security or veterans' funds" (*ibid.*). The court reasoned that both Social Security and VA benefits are paid "for the purpose of assuring the beneficiaries' care and maintenance"; the court therefore concluded that "reimbursement of the State for the care and maintenance of the beneficiaries of these two federal programs is entirely consistent with the thrust of the federal legislation" (*id.* at 2, 3). In reaching this conclusion, the Arkansas court distinguished this Court's prior decision in *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413 (1973), which held that 42 U.S.C. 407 bars a State from attaching Social Security benefits as reimbursement for state welfare assistance payments. This distinction was based on the theory that the Social Security recipient in *Philpott* " 'was capable, at least in part, of providing for his own care,' " whereas Arkansas in the instant case was " 'acting *in loco parentis*' " by providing all of the "care and maintenance [of] the beneficiaries" (Pet. App. 4 (citation omitted)).

[3] The trial court subsequently ordered the assets frozen pending resolution of this action. See Order No. 83-357 (Nov. 21, 1983) (attached as exhibit to petitioners' Affidavit in Support of Motion to Proceed in Forma Pauperis).

Justice Purtle dissented, finding *Philpott* "controlling" here (Pet. App. 6). He explained that Congress "unquestionably, by the clear and express language of the statutes, intended the recipients to be the owners of such funds and that no one, even judgment creditors, could take these funds away from the beneficiaries" (*ibid.*). And he noted that the "majority opinion • • • is precedent for allowing judgment creditors, who have furnished food, clothing, lodging, and other items of the costs of living to recipients of Veterans' benefits and Social Security benefits, to garnish such benefits" (*id.* at 7). He therefore found the majority's holding to be "inconsistent with the clear and unambiguous language of the federal statutes," adding that "[a]ny change in the law should come from Congress" (*id.* at 7, 8).

ARGUMENT

"There can be no dispute that the Supremacy Clause invalidates all state laws that conflict or interfere with an act of Congress." *Rose* v. *Arkansas State Police*, No. 85-1388 (Nov. 3, 1986), slip op. 2 (per curiam). See *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712-713 (1985); *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824). It is equally clear that the validity of a challenged state law turns on its consistency with the congressional language and purposes. See *California Federal Savings & Loan Ass'n* v. *Guerra*, No. 85-494 (Jan. 13, 1987), slip op. 7; *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202, 208-209 (1985). We believe that the Arkansas statute challenged here, both on its face and as applied by the Arkansas Supreme Court, is invalid under the Supremacy Clause because it is inconsistent with the explicit language of the relevant federal statutes.[4]

[4] Arkansas is not the only State that permits an action against an inmate's property for the costs of his incarceration. At least four other States – Michigan, Ohio, Oklahoma and Tennessee – have reimbursement statutes similar to the statute involved here. See Mich. Comp. Laws Ann. §§ 800.401 *et seq.* (West 1982 & Supp. 1987); Ohio Rev. Code Ann. §§ 307.93(D), 341.14, 341.19, 753.02(B), 753.04(B), 753.16(C), 2301.56(B), 2947.19(B) and 2929.15 (Anderson 1979 & Supp. 1986); Okla Stat. Ann. tit. 57, § 542 (West Supp. 1987); Tenn. Code Ann. §§ 41-21-216 *et seq.* (1982). It also appears that six States – Alabama, Illinois, Kentucky, Missouri, Nebraska and North Carolina – require reimbursement from certain types of prisoners. Ala. Code § 14-6-22 (Supp. 1986) (misdemeanants); Ill. Ann. Stat. ch. 38, para. 1003-4-3 (Smith-Hurd Supp. 1987) (juveniles; limited to $200 in the aggregate); Ky. Rev. Stat. Ann. § 534.045 (Michie/Bobbs-Merrill 1985) (misdemeanants; limited to $10 per day); Mo. Ann. Stat. § 221.070 (Vernon 1983) (county prisoners); Neb. Rev. Stat. § 29-1006 (1985) (prisoners where confinement in a county or local jail is a condition on probation); N.C. Gen. Stat. § 7A-313 (1986) (prisoners awaiting trial). Finally, it appears that eight States – Arizona, Florida, Maine, Maryland, Mississippi, Nevada, North Dakota and Rhode Island – require reimbursement for certain kinds of state claims. Ariz. Rev. Stat. Ann. § 31-342 (1986) (costs of escape); Fla. Stat. Ann. § 901.35(1)(b) (West 1985) (medical expenses); Me. Rev. Stat. Ann. tit. 30, § 1712 (Supp. 1986) (medical expenses); Md. Ann. Code art. 27, §§ 678(B), 636 (1982) (costs of escape and destruction of state property); Miss. Code Ann. § 47-5-119 (1981) (costs of escape); Nev. Rev. Stat. § 209.246 (1985) (costs of escape, property damage, medical treatment and participation in a riot); N.D. Cent. Code §§ 11-15-07.21, 12-48-20 (1985) (costs of escape and sheriff's cost in boarding prisoners); R.I. Gen. Laws § 42-56-20.1 (1984) (medical expenses).

1. a. The conflict between the Arkansas statute and federal law is plain from the language of Sections 407 and 3101. The federal statues respectively provide that Social Security and VA benefits shall not be "subject to execution, levy, attachment, garnishment, or other legal process," and "shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever." 42 U.S.C. (Supp. III) 407(a); 38 U.S.C. 3101(a). But the Arkansas

statute directs the State to proceed against a prisoner's "estate," a term that is defined to include "income or payments • • • from any source" (Ark. Stat. Ann. § 46-1702(d) (Supp. 1985)); this definition specifically includes "payments • • • from Social Security" (*ibid.*), and the Arkansas Supreme Court held that the definition reached VA payments as well (Pet. App. 1, 3). In holding that Social Security and VA benefits could be attached in this way to satisfy the claims of the State as creditor, the Arkansas Supreme Court disregarded Congress's clear directives.

The unsurprising proposition that Congress meant what it said in Sections 407 and 3101 is confirmed by this Court's decision in *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413 (1973). Relying on prior interpretations of Section 3101 (see 409 U.S. at 416-417), the Court there held that the "all-inclusive" language of Section 407 barred a State's attempt to attach Social Security benefits as reimbursement for its welfare assistance payments (*id.* at 415).[5] The Court saw "no reason why a State, performing its statutory duty to take care of the needy, should be in a preferred position as compared with any other creditor" (*id.* at 416).[6] The Court therefore declined to

[5] The Court explained that Sections 407 and 3101 bar the attachment of any benefits that "retain[] the 'quality of moneys' and ha[ve] not become a permanent investment" (409 U.S. at 416 (quoting *Porter* v. *Aetna Casualty & Surety Co.*, 370 U.S. 159, 161-162 (1962)). The funds at issue here – non-commingled benefit payments whose disposition has been frozen pending the outcome of this litigation (see notes 2 & 3, *supra*) – surely fall within this category.

[6] Several lower courts have held that Section 407 does not prohibit state efforts to obtain "voluntary" repayment of state expenditures from an individual's Social Security benefits. See *French* v. *Department of Social Services*, 92 Mich. App. 701, 285 N.W.2d 427 (1979); *Tunnicliff* v. *Commonwealth*, 483 Pa. 275, 396 A.2d 1168 (1978). See also *State Central Collection Unit* v. *Stewart*, 292 Md. 255, 438 A.2d 1311 (1981) (concluding that *Philpott* does not bar entry of a judgment against a person whose sole known income consists of Social Security benefits, provided that the State does not attempt to execute on the judgment). But see *Page* v. *Heckler*, 596 F. Supp. 1543 (M.D. Pa. 1984), aff'd, 786 F.2d 150 (3d Cir. 1986) (Section 407 bars the Secretary of HHS from attempting to obtain reimbursement out of benefits by means of cross-program recovery); *Ellender* v. *Schweiker*, 575 F. Supp. 590 (S.D.N.Y. 1983), dismissed, 781 F.2d 314 (2d Cir. 1986) (same).

read "an implied exemption" into Section 407 for the State's benefit (*ibid.*). This holding is dispositive here.[7]

b. The Arkansas Supreme Court nevertheless ruled that the federal anti-attachment provisions "contain an implied exception to the exemption from legal process when the State provides for the care and maintenance of a beneficiary," thus fulfilling the purpose of the federal benefit program. Pet. App. 2, 4.[8] But this analysis

[7] The Arkansas Supreme Court distinguished *Philpott* on the ground that " 'there the welfare recipient was capable, at least in part, of providing for his own care' " (Pet. App. 4 (quoting *Department of Health* v. *Davis*, 616 F.2d 828, 830 (5th Cir. 1980)), while "here the State provided the care and maintenance for the beneficiaries" (Pet. App. 4). But nothing in *Philpott* supports such a distinction. Indeed, the recipient in that case received state welfare payments "by reason of permanent and total disability" (409 U.S. at 414); the Court nowhere suggested that the recipient received support from sources other than the State, or that the presence or absence of such support would have made any difference to its holding.

[8] Several other courts have used a similar rationale in holding that States may attach Social Security or VA benefits paid to prisoners or to patients confined to mental hospitals. See *Department of Health* v. *Davis*, 616 F.2d 828 (5th Cir. 1980) (Social Security and VA benefits; incompetent in state hospital); *In re Lewis' Estate*, 287 Mich. 179, 283 N.W. 21 (1938) (VA benefits; incompetent in state hospital); *State Treasurer* v. *Brown*, 125 Mich. App. 620, 337 N.W.2d 23 (1983) (Social Security benefits; inmate in state prison). See also *Auditor General* v. *Olezniczak*, 302 Mich. 336, 4 N.W.2d 679 (1942) (VA benefits; incompetent prisoner in state hospital). Several decisions also have allowed States to obtain reimbursement under a parens

simply cannot be reconciled with the plain language of either federal statute. As the Court put it in *Philpott*, the language of Section 407—and thus, necessarily, the virtually identical language of Section 3101—"is all-inclusive" (409 U.S. at 415 (footnote omitted)). Neither provision contains an exception for creditors or for other persons who may have provided the recipient with necessary care. And neither provision contains any language suggesting that a State stands on a different footing from any other creditor; indeed, this Court in *Philpott* rejected that very argument (*id.* at 416).

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patriae rationale—in effect, holding that the State was performing a duty as guardian for the incompetent beneficiary. *In re Bayly's Estate*, 95 Cal. App. 2d 174, 212 P.2d 587 (1949); *In re Bemowski*, 3 Wis. 2d 133, 88 N.W.2d 22 (1958). Other courts have held that States may obtain reimbursement for the costs of supporting patients confined to mental hospitals on the rationale that the State is not a "creditor." See *Savoid* v. *District of Columbia*, 288 F.2d 851, 852 (D.C. Cir. 1961); *Cruce* v. *Arkansas State Hospital*, 241 Ark. 680, 689, 692, 409 S.W.2d 342, 347-349 (1966); *Department of Public Welfare* v. *Sevcik*, 18 Ill.2d 449, 164 N.E.2d 10 (1960); *State* v. *Bean*, 159 Me. 455, 195 A.2d 68 (1963); *In re Simpson*, 270 A.D. 902, 61 N.Y.S.2d 529 (1946); *State ex rel. Eastern State Hospital* v. *Beard*, 600 P.2d 324, 325-326 (Okla. 1979); *In re Bemowski*, *supra*. And several courts have held that the protection of Section 3101 is lost when a veteran dies, so that the State may obtain reimbursement after death for care that had been rendered to an incompetent veteran. See *In re Todd's Estate*, 243 Iowa 930, 54 N.W.2d 521 (1952); *State* v. *Monaco*, 81 N.J. Super. 448, 195 A.2d 910 (1963); *In re Estate of Pierce*, 492 Pa. 10 , 421 A.2d 1065 (1980); *In re Buxton's Estate*, 246 Wis. 97, 16 N.W.2d 399 (1944). But see *In re Estate of Chojnacki*, 397 Pa. 596, 156 A.2d 812 (1959) (State cannot compel satisfaction of its claim for full cost of maintenance of mentally incompetent veteran in state hospital out of proceeds of veteran's pension in hands of guardian), cert. denied, 363 U.S. 826 (1960). Compare *In re Grcich*, 492 Pa. 210, 214-215, 423 A.2d 347, 349 (1980) (guardian of incompetent veteran may not be surcharged for use of VA benefits, with consent of the VA and the court, to reimburse State for the ward's care and maintenance), cert. denied, 450 U.S. 997 (1981).

There is no reason in this case to doubt that "the ordinary meaning of the language that Congress employed 'accurately expresses the legislative purpose.'" *Mills Music, Inc.* v. *Snyder*, 469 U.S. 153, 164 (1985). Where the statutory language is clear, a court's invocation "of the 'plain purpose' * * * at the expense of the terms of the statute * * * prevents the effectuation of congressional intent." *Board of Governors* v. *Dimension Financial Corp.*, 474 U.S. 361, 374 (1986). Indeed, as Justice Purtle noted in dissent, the rationale used by the Arkansas Supreme Court would create a large loophole in Sections 407 and 3101 by permitting suits on the part of "judgment creditors, who have furnished food, clothing, lodging, and other items of the costs of living to the recipients of Veterans' benefits and Social Security benefits" (Pet. App. 7). Such a result would scarcely advance the purpose of the federal anti-attachment statutes.[9]

2. a. The clarity of the statutory language and the obvious applicability of this Court's decision in *Philpott* make consideration of the statutes' legislative histories largely superfluous. But those histories do not, in any

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[9] The judgment of the Arkansas Supreme Court is not supported by this Court's recent decision in *Rose* v. *Rose*, No. 85-1206 (May 18, 1987), that a veteran can permissibly be held in contempt for failing to pay child support even though his VA disability benefits are his only means of satisfying his support obligations. In holding that Section 3101 did not bar the contempt citation, the Court found it "critical" that VA benefits "are intended to support not only the veteran, but the veteran's family as well" (slip op. 13; see *id.* at 10). Because use of funds to pay child support therefore would "further, not undermine, the federal purpose in providing these benefits" (*id.* at 13)—and because there is a strong presumption that Congress has not intended to preempt the field of domestic relations (see *id.* at 5)—the Court held that Section 3101 "does not extend to protect a veteran's disability benefits from seizure where the veteran invokes that provision to avoid an otherwise valid order of child support" (*id.* at 13). Obviously, neither of those factors is at work in this case.

event, contain anything inconsistent with the respective statutory texts. Section 407 was enacted in 1935 as part of the original Social Security Act. Act of Aug. 14, 1935, ch. 531, § 208, 49 Stat. 625. The relevant committee reports accompanying this legislation simply paraphrase the language of the statute; neither suggests that Section 407 contains any implied exceptions. See H.R. Rep. 615, 74th Cong., 1st Sess. 21 (1935); S. Rep. 628, 74th Cong., 1st Sess. 32 (1935). When Congress reenacted the provision as part of the Social Security Act Amendments of 1939, ch. 666, § 207, 53 Stat. 1372, it again confirmed, in general terms, that Section 407 "provides that a right to payment under this title shall not be transferable or assignable nor shall any moneys paid or payable be subject to execution or other legal process." H.R. Rep. 728, 76th Cong., 1st Sess. 45 (1939); S. Rep. 734, 76th Cong., 1st Sess. 53 (1939).

Similarly, nothing in the legislative history of Section 3101 suggests that that statute contains any implied exception for the benefit of States or other creditors who provide support to recipients of VA benefits. Although laws protecting veterans' benefits from attachment date back to 1873,[10] Congress enacted the substance of the present

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[10] Section 4747 of the Revised Statutes (1873 ed.) provided as follows:

> No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension-Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner.

In 1924, Congress enacted the World War Veterans' Act, ch. 320, § 22, 43 Stat. 613, which provided, in pertinent part:

> That the compensation, insurance, and maintenance and support allowance payable under [this Act], * * * shall not be subject to the claims of creditors of any person to whom an award is made * * *; and shall be exempt from all taxation * * *.

provision in 1935. Act of Aug. 12, 1935, ch. 510, § 3, 49 Stat. 609. The Senate report accompanying the bill explained that predecessor statutes differed somewhat in the extent of the protection that they afforded veterans, and stated that "[t]he purpose of this new section is twofold; first, to make uniform the law with respect to exemptions granted beneficiaries, and second to clarify the language with respect to such exemptions." S. Rep. 1072, 74th Cong., 1st Sess. 6 (1935). The corresponding House report stated simply that "amendatory legislation" was needed "in order that the same protection, immunity, and exemption may be provided for all benefits" (H.R. Rep. 16, 74th Cong., 1st Sess. 2 (1935)). Given the broad language of the statute, these explanations certainly suggest that Congress intended Section 3101 to be all-inclusive.[11]

b. It should be added that legislation enacted in 1980 and 1983 eliminates or substantially reduces the Social Security and VA benefits available to certain persons who have been incarcerated following the commission of certain crimes. In 1980, Congress amended the Social Security Act to provide that disability benefits may not be paid to any person

> for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which

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[11] The veterans' benefit provision was put in its current form in 1957 (Pub. L. No. 85-56, § 1001, 71 Stat. 122) and was codified at 38 U.S.C. 3101 in the following year. Pub. L. No. 85-857, § 3101(a), 72 Stat. 1229. The relevant committee reports explain that both of these statutes restated existing law. See H.R. Rep. 279, 85th Cong., 1st Sess. 2, 22 (1957); S. Rep. 332, 85th Cong., 1st Sess. 2 (1957); H.R. Rep. 1298, 85th Cong., 2d Sess. 6 (1958); S. Rep. 2259, 85th Cong., 2d Sess. 7 (1958).

> * * * is expected to result in such individual['s] being able to engage in substantial gainful activity upon release and within a reasonable time.

Act of Oct. 19, 1980, Pub. L. No. 96-473, § 5(c), 94 Stat. 2265 (originally codified at 42 U.S.C. (Supp. IV 1980) 423(f)(1)). This restriction was broadened in 1983 to withhold Social Security retirement benefits, as well as disability benefits, from incarcerated felons. Social Security Amendments of 1983, Pub. L. No. 98-21, § 339(a), 97 Stat. 133 (codified at 42 U.S.C. (Supp. III) 402 (x)(1)).

Similarly, in 1980 Congress substantially curtailed the VA benefits payable to veterans who have been confined to a federal, state, or local penal institution "for a period in excess of sixty days for conviction of a felony." Veterans' Disability Compensation and Housing Benefits Amendments of 1980, Pub. L. No. 96-385, § 504(a), 94 Stat. 1534 (codified at 38 U.S.C. 3113(a)(1)). Such a veteran with a service-connected disability rated 20% or more disabling generally may not receive more than $68 per month from the sixty-first day of incarceration through the date of his release (38 U.S.C. 3113(a)(1)(A), cross-referring to 38 U.S.C. (& Supp. III) 314(a)). This reduction in VA benefits does not apply, however, "with respect to any period during which a person is participating in a work-release program or is residing in a half-way house" (38 U.S.C. (& Supp. III) 3113(a)(2)), and any compensation forfeited by the veteran may generally be apportioned to his spouse or children (38 U.S.C. 3113(b)(1) and (2), 3107).

In enacting the amendments just described, Congress dealt in a careful and circumscribed manner with one aspect of the problem involved in this case—whether and to what extent incarcerated felons should continue to receive federal disability and retirement benefits. Those amendments express Congress's general understanding, subject to various exceptions, that federal benefits should not be paid, or should be paid at substantially reduced

levels, for the upkeep of persons who are incarcerated.[12] But the 1980 and 1983 enactments obviously did not create or sanction any "implied exception" (Pet. App. 4) to the scope of Sections 407 and 3101 of the sort manufactured by the Arkansas Supreme Court. While Congress recognized that some prisoners might obtain an unjustified windfall if they continued to receive full Social Security or VA benefits while incarcerated,[13] Congress chose to address that problem by eliminating or reducing those benefits. Congress did not provide that Social Security and VA funds could be converted into a subsidy for state prison systems by allowing States to attach the federal benefits that prisoners receive.

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[12] The statutory limitation on payment of VA benefits to incarcerated felons by its terms does not apply to petitioner Shelton, who was adjudged disabled prior to October 1, 1980, and who committed his felony prior to the October 7, 1980, effective date of the statute. See 38 U.S.C. 3113(d). In contrast, the payment of Social Security retirement benefits to petitioner Bennett should have been terminated after April 20, 1983, the effective date of the 1983 amendment to the Social Security Act (see § 340(c), 97 Stat. 135). We are informed by the Department of Health and Human Services, however, that Bennett erroneously was paid benefits through the date of his release from prison in December 1984. The Social Security Administration (SSA) has informed Bennett that it intends to recoup the overpayment; Bennett's request for a waiver of the recoupment claim is pending before SSA.

[13] In providing that Social Security disability benefits should not be paid to persons incarcerated after the commission of a felony, Congress explained in 1980 that "[t]he [Social Security] disability program exists to provide a continuing source of monthly income to those whose earnings are cut off because they suffered a severe disability. The need for this continuing source of income is clearly absent in the case of an individual who is being maintained at public expense in prison." S. Rep. 96-987, 96th Cong., 2d Sess. 8 (1980). See H.R. Conf. Rep. 98-47, 98th Cong., 1st Sess. 158 (1983). See also H.R. Rep. 96-1155, 96th Cong., 2d Sess. 15-16 (1980) (reduction of VA benefits to incarcerated felons is a "cost-saving" measure).

To the contrary, in the same legislation that enacted the restriction on the payment of retirement benefits to felons, Congress *enhanced* the protection afforded by Section 407 against the attachment of Social Security benefits. That enhancement was accomplished by adding a new Subsection 407(b), providing that "[n]o other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." Pub. L. No. 98-21, § 335(a), 97 Stat. 130 (as codified in 42 U.S.C. (Supp. III) 407(b)).[14] It is thus clear that a State's attempt to attach Social Security benefits, in circumstances where Congress has continued to make such benefits available to an incarcerated person, would run directly counter to Section 407.

3. The significance of the Arkansas Supreme Court's decision has been reduced by the 1980 and 1983 legislation just described. As a rule, persons who have been incarcerated after felony convictions will not receive Social Security payments for years after 1983, and such persons will receive VA benefits for years after 1980 only in substantially reduced amounts. Thus, state attachment statutes of the sort involved here will operate in the future in a smaller universe of cases, and on a smaller pool of benefits, than was true when this litigation arose.

[14] Congress's immediate intention in adding Section 407(b) was to overrule several judicial decisions that had construed the Bankruptcy Reform Act of 1978 to permit inclusion of Social Security benefits in a debtor's estate, and that had directed the payment of such benefits to the bankruptcy trustee. See H.R. Rep. 98-25, 98th Cong., 1st Sess. Pt. 1, at 82-83 (1983); H.R. Conf. Rep. 98-47, 98th Cong., 1st Sess. 153 (1983) ("Since 1935, the Social Security Act has prohibited the transfer or assignment of any future social security or SSI benefits payable and further states that no money payable or rights existing under the Act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.").

In our view, however, the question presented nevertheless has continuing importance. The 1980 and 1983 enactments reduce federal benefits only in the case of felony convictions; as we have observed (note 4, *supra*), several States authorize attachment of inmates' funds outside the felony context. Even in felony cases, Congress specifically chose to make limited VA benefits available to felons serving prison terms despite the fact of their incarceration (38 U.S.C. 3113(a)(1)). Congress likewise chose to make full VA and Social Security benefits available to felons in specified circumstances, *e.g.*, where the prisoner is participating in a rehabilitation or work-release program. See 42 U.S.C. (Supp. III) 402(x)(1); 38 U.S.C. (& Supp. III) 3113(a)(2). The decision of the Arkansas Supreme Court, which would appear to permit the attachment of benefits in such circumstances, is flatly inconsistent with this congressional decision.

The rationale used by the Arkansas Supreme Court, moreover, would seem to validate the attachment of Social Security and VA benefits paid to persons confined in state mental hospitals (see cases cited at note 8, *supra*) or in other institutions where they are provided care by the State. Whether federal benefits may be attached by the States under those circumstances is a significant question that has caused confusion among the lower courts (see note 8, *supra*), and it is a question that "touch[es] the accommodation of state and federal interests under the Constitution." *Kosydar* v. *National Cash Register Co.*, 417 U.S. 62, 65 (1974). Review by this Court accordingly is appropriate to ensure the uniform administration of these nationwide benefit programs.[15]

[15] Because the decision of the Arkansas Supreme Court is at odds with the plain language of Sections 407 and 3101, the Court may wish to consider summary reversal.

CONCLUSION

The petition for a writ of certiorari should be granted.
Respectfully submitted.

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SEPTEMBER 1987

U.S. GOVERNMENT PRINTING OFFICE: 1987 — 191-463/60610

JOINT

APPENDIX

Supreme Court, U.S.
FILED
NOV 30 1987
JOSEPH F. SPANIOL, JR.
CLERK

(5)

No. 86-6124

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

GEORGE E. BENNETT, *Petitioner,*

v.

STATE OF ARKANSAS, *Respondent.*

On Writ Of Certiorari To The Supreme Court Of Arkansas

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED DECEMBER 27, 1986
CERTIORARI GRANTED OCTOBER 13, 1987

29P

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PULASKI COUNTY CIRCUIT COURT
SECOND DIVISION

Chronological Listing of Entries

Date	Proceedings
Jan. 14, 1983	COMPLAINT by the State against Everett E. Shelton
Jan. 14, 1983	COMPLAINT by the State against George E. Bennett
Jan. 14, 1983	ORDER freezing Shelton's assets
Jan. 14, 1983	ORDER freezing Bennett's assets
Feb. 9, 1983	ANSWER fileld *pro se* by Shelton
Nov. 23, 1983	MOTION TO CONSOLIDATE the cases against Shelton, Bennett and Johnson
Nov. 23, 1983	CONSOLIDATED ANSWER Filed by Counsel for Bennett and Shelton
Nov. 23, 1983	ORDER OF NONSUIT of Shelton's individual claims against the State
Nov. 23, 1983	STIPULATION OF FACT
Nov. 26, 1983	ORDER granting the Motion to Consolidate
Jan. 9, 1984	TRIAL BRIEF of the State of Arkansas
Jan. 10, 1984	DEFENDANT'S MEMORANDUM BRIEF
Jan. 17, 1984	DEFENDANT'S MEMORANDUM BRIEF IN REPLY
Jan. 18, 1984	REPLY BRIEF of the State of Arkansas
Nov. 18, 1985	JUDGMENT
Nov. 26, 1985	NOTICE OF APPEAL
Nov. 26, 1985	CLERK'S CERTIFICATE

IN THE CIRCUIT COURT OF PULASKI COUNTY

Case No. 83-360

STATE OF ARKANSAS
Plaintiff

v.

GEORGE E. BENNETT, INMATE, ADC #64036
ARKANSAS DEPARTMENT OF CORRECTION
Defendant

FILED Jan 14, 1983

COMPLAINT

Plaintiff, State of Arkansas, for its claim and cause of action against the Defendant, George E. Bennett, states:

I.

The Arkansas Attorney General, pursuant to Act 715 of 1981, known as the "State Prison Inmate Care and Custody Reimbursement Act" is authorized to institute legal proceedings on behalf of the State of Arkansas in the Circuit Court to recover the "cost of care" of an inmate confined to an institution of the Department of Correction.

II.

Plaintiff alleges that Defendant is a prisoner in the lawful custody of the Arkansas Department of Correction, at the Diagnostic Unit, and that a copy of this complaint has been mailed to the Warden of the Diagnostic Unit.

III.

Act 715 § 5 of 1981 (codified at Ark. Stat. Ann. § 46-1704 (1981 Supp.)) requires this action to be filed in the Circuit Court of the county from which said inmate is sentenced.

IV.

Plaintiff alleges that defendant was sentenced to the Department of Correction by Pulaski County Circuit Court.

V.

Plaintiff has good reason to believe and does believe that the defendant inmate has an estate, to wit: *inter alia*, a balance as of January 7, 1983, in his individual inmate account at the Diagnostic Unit of $1,108.25.

VI.

Plaintiff further alleges that the estate is sufficient to pay all of a portion of the "cost of care" of the inmate as required by Act 715 of 1981.

VII.

Plaintiff anticipates and believes that the Defendant, George E. Bennett, his relative or agents, will transfer, dispose or divert his assets in order to prevent the Plaintiff from recovering the "cost of care" of Defendant's stay in the Department of Correction as authorized by Act 715 of 1981.

VIII.

Plaintiff further alleges that, unless directed otherwise, the Defendant's assets will be put beyond the reach of the Plaintiff and Plaintiff will be left without an adequate remedy at law. Pursuant to Ark. Stat. Ann. § 22-307 (1962), a circuit judge has the authority to issue all writs or orders which may be necessary in the exercise of its jurisdiction. For that reason, Plaintiff seeks the immediate issuance of an interlocutory order against Defendant, ordering him not to transfer, dispose or divert his assets during the pendency of this action.

WHEREFORE, plaintiff, State of Arkansas, prays for the appointment of a guardian of such person, if a guardian has not already been so appointed, and that said estate may be sub-

jected to the payment to the State of expenses paid and to be paid by the State on behalf of said person as a prisoner and respectfully moves the court to issue an order restraining the defendant, George E. Bennett, his relatives, agents, servants and employees during the pendency of this action, from transferring, disposing, or diverting any assets (with the exception of the $30 per week withdrawal from the defendant's account in the inmate welfare fund) of the Defendant's estate, in an attempt to prevent the State from recovering the "cost of care" from the Defendant's estate.

Respectfully submitted,

STEVE CLARK
Attorney General

/S/ By: Randall Miller
RANDEL MILLER
Rule XII Certified Admin. Asst.
Justice Building
Little Rock, Arkansas 72201

(Verification omitted in printing)

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

(title omitted in printing)

No. 83-360

ORDER

Now on this 14th day of January, 1983, comes on for hearing upon the motion of the Plaintiff, State of Arkansas, for an Order of this Court restraining the Defendant, George E. Bennett, from disposing, diverting or transferring his assets until the Court has had an opportunity to rule on the merits of the complaint.

The Court being well and sufficiently advised of all matters of law and fact before it, finds that the Defendant, his relatives, agents or employees may attempt to divert, dispose or transfer the assets of the Defendant prior to a hearing on Plaintiff's claim to those assets.

IT IS, THEREFORE, CONSIDERED, ORDERED AND ADJUDGED by this Court that the defendants, his relatives, agents or employees are immediately restrained from disposing, diverting or transferring his assets during the pendency of this proceeding, with the exception of a $30 per week withdrawal from his individual inmate welfare account.

/S/ Perry Whitmore
PERRY WHITMORE
CIRCUIT JUDGE

DATE JANUARY 14, 1983

NOTICE—THIS COURT WILL ENTERTAIN ANY OBJECTIONS TO THIS PRELIMINARY ORDER ON FRIDAY, JANUARY 21, 1983 AT 1:30 PM

In the Circuit Court of Pulaski County, Arkansa

SECOND DIVISION

No. 83-357
No. 83-360
No. 83-359

STATE OF ARKANSAS

Plaintiff

v.

EVERETT SHELTON, ROOSEVELT JOHNSON, GEORGE E. BENNETT

Defendants

Filed Nov. 23, 1983

CONSOLIDATED ANSWER

Come Everett Shelton, Roosevelt Johnson and George E. Bennett by their attorneys, Lessenberry & Carpenter, and state:

1. That the answers of Everett Shelton is adopted by Roosevelt Johnson and George E. Bennett.

2. That each defendant admits the nature of the suit, that each defendant has been incarcerated and each are in the custody of the Department of Correction pursuant to a judgment of a conviction of a felony.

3. That each defendant admits that he has funds which the plaintiff intends to take for its use in defraying expenses of the Department of Correction.

4. That each defendant admits that a copy of the complaint has been mailed to the warden.

5. That each defendant admits that in absence of a judgment of this court to the contrary, he intends to use his funds in a manner exclusively as he deems appropriate.

6. That each defendant denies each and every other allegation contained in the Complaints.

7. That Act 715, Acts of Arkansas of 1981 is unconstitutional and should be declared void for several reasons.

8. That Act 715 is void for lack of due process of law relative to lack of notice, time to answer or otherwise respond, to have a trial by jury, the opportunity to have witnesses, to have an attorney, to have the opportunity for discovery, to cross examine witnesses, to testify or to appeal, among other things.

9. That Act 715 is highly penal and operates *ex post facts*.

10. That no standards are prescribed in determining the "cost of care" as defined in Act 715.

11. That Act 715 is an unlawful delegation of power by the Arkansas General Assembly to the Director of the Department of Correction and the State Board of Correction.

12. That the funds possessed by these defendants which make up part or whole of the funds the plaintiff seeks to take were accumulated and acquired by these defendants and others. That the funds of these defendants are exempt from execution or seizure by Federal Statutes which are superior to Act 715.

13. That Act 715 is impermissably vague, over-broad and discriminatory.

14. That Act 715 is unconstitutional in that it fails to permit consideration of the work of an inmate and his production, the fact that the opportunity of an inmate to produce is left solely to others, that the ability to produce relates to sex, age, health, skills, education and other factors involving these and other inmates.

15. That Act 715 seeks to exact moneys from inmates as a consequence of their convictions in addition to the sentences imposed by the judges and jurys.

WHEREFORE, defendants pray that the complaints be dismissed; that the funds of these defendants are exempt from Act 715; that Act 715, Acts of Arkansas 1981 as declared unconstitutional; and for all other proper relief.

LESSENBERRY & CARPENTER
807 West Third Street
Little Rock, AR 72201

/s/ By: Jack L. Lessenberry
JACK L. LESSENBERRY

IN THE CIRCUIT COURT OF PULASKI COUNTY

SECOND DIVISION

(title omitted in printing)

No. 83-357, No. 83-360, No. 83-359

FILED Nov. 23, 1983

MOTION TO CONSOLIDATE CASES

Come Everett Shelton, Roosevelt Johnson and George E. Bennett by their attorneys, Lessenberry & Carpenter, and state:

1. That each of the defendants have been sued by the State of Arkansas alleging identical facts and praying for the same relief.

2. That the issues of the defense are similar.

3. That the defendants agree that these cases are appropriate to consolidate.

4. That the time and expenses of all of the parties would be conserved by consolidation.

WHEREFORE, Everett Shelton, Roosevelt Johnson and George E. Bennett pray that these cases be consolidated for trial, briefing and consideration.

LESSENBERRY & CARPENTER
807 West Third Street
Little Rock, AR 72201

/s/ By: Jack L. Lessenberry
JACK L. LESSENBERRY

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

SECOND DIVISION

(title omitted in printing)

No. 83-357
No. 83-359
No. 83-360

FILED Nov. 23, 1983

STIPULATION

The parties have agreed that the following can be stipulated as fact in the above matter:

1. That Roosevelt Johnson, A.D.C. # 58739, is a prisoner incarcerated in the Arkansas Department of Correction on a sentence of life imprisonment for the offense of murder in the first degree and:

(a) That the monies that have been seized by the State pursuant to Ark.Stat.Ann. §§ 46-1701, *et seq* (Supp. 1983) were funds that Johnson received as Social Security retirement benefits;

(b) That while in the Arkansas Department of Correction, Johnson was subject to working daily without any remuneration from the prison for the work done;

(c) That Johnson sends approximately $300.00 a year to family members for their support;

(d) That Johnson has requested clemency consideration in the past but, has been denied clemency by the Office of the Governor.

2. That Everett E. Shelton, A.D.C. # 75091, is a prisoner incarcerated in the Arkansas Department of Correction on a sentence of twenty years imprisonment, with five years suspended, for the offense of theft by deception and:

(a) That the monies that have been seized by the State pursuant to Ark.Stat.Ann. §§ 46-1701, *et seq* (Supp. 1983) were funds that Shelton received as Veteran's Administration benefits for being a disabled veteran;

(b) That while in the Arkansas Department of Correction, Shelton is subject to working daily without any remuneration from the prison for the work done;

(c) That Shelton has requested parole consideration but, has been denied parole by the Board of Pardons & Paroles;

3. That George E. Bennett, A.D.C. # 64036, is a prisoner incarcerated in the Arkansas Department of Correction on a sentence of twenty-one years imprisonment for the offense of murder in the second degree and:

(a) That the monies that have been seized by the State pursuant to Ark.Stat.Ann. §§ 46-1701, *et seq* (Supp. 1983) were funds that Bennett received as Social Security retirement benefits;

(b) That while in the Arkansas Department of Correction, Bennett is subject to working daily without any remuneration from the prison for the work done;

(c) That Bennett was requested parole consideration but, [sic] has been denied parole by the Board of Pardons & Paroles.

4. That the parties have not been appointed a guardian as anticipated by Ark.Stat.Ann. § 46-1704 (Supp. 1983).

IT IS STIPULATED AND AGREED BY THE PARTIES.

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/s/ By: Randel Miller
RANDEL MILLER
ASSISTANT ATTORNEY GENERAL

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VB6/s/ By: Thomas M. Carpenter
THOMAS M. CARPENTER
COUNSEL FOR DEFENDANTS

IN THE CIRCUIT COURT OF PULASKI COUNTY

SECOND DIVISION

(title omitted in printing)

No. 83-360
No. 83-357

FILED Nov. 18, 1985

JUDGMENT

On this 18th day of November, 1985, having considered the testimony and evidence presented, and having heard argument of counsel, the court makes the following findings of fact and conclusions of law:

1. The Court has jurisdiction over the parties and the subject matter herein.

2. The matter proceeded at first without the defendants being represented by counsel. The parties have stipulated, and the court finds, that all issues have been properly joined and all pleadings have been timely filed. No decision reached herein is, or should be, based on any procedural default.

3. The State has filed this action pursuant to Act 715, Ark.Stat.Ann. §§ 46-1701 -1707 (Supp. 1983) to recover from the above named defendants the cost of keeping them incarcerated in the Arkansas Department of Correction. Defendants have attacked the act as being unconstitutional. This court finds it to be constitutional in all respects. The act does not violate due process or equal protection. It is not ex post facto legislation and is not an unlawful delegation of power to the State Board of Correction.

4. Further, the fact that the State can be reimbursed out of defendant's Veteran's Administration and Social Security benefits does not violate the Supremacy Clause of the United States Constitution. *See Department of Correction* vs. *Brown*, 337 NW2d 23 (Mich. 1983). Although 38 U.S.C. § 1301 provides that Veteran's Administration benefits are exempt from the claim of creditors, and 42 U.S.C. § 407 protects Social Security benefits from execution, attachment and garnishment, these statutes do not apply to this situation. The purpose of Veteran's Administration and Social Security benefits is to provide support and maintenance to the beneficiary and to protect beneficiaries from some of the hardships of existence. *Lawrence* v. *Shaw*, 300 U.S. 245 (1937); *United States* v. *Silk*, 331 U.S. 704, 91 L.Ed. 1757 (1947). It would not comport with the philosophy of either the Social Security Act or the Veteran's Administration Act to allow a creditor to take what a beneficiary needs for bare existence. Here, however, this is not an action by a creditor seeking to turn the benefits to satisfy his demands, but only the question of reimbursement of the State for care and maintenance. The provisions of 38 U.S.C. § 310 and 42 U.S.C. § 407 were not intended to prohibit a state from being reimbursed under these circumstances. *See Dept. of Health* v. *Davis*, 616 F.2d 828 (5th Cir. 1980); *Cruce* v. *Arkansas State Hospital*, 241 Ark. 680, 409 S.W.2d (1966). Therefore, there is no violation of the Supremacy Clause under these circumstances.

5. This court further makes the following findings of fact pursuant to Act 715:

A. Defendants were incarcerated in the Arkansas Department of Correction. Defendant Bennett was serving a 21 year sentence for second degree murder which began on March 19, 1973. Mr. Bennett was discharged from the Department of Correction in December, 1984. Defendant Shelton is serving a 15 year sentence for theft of property which began on June 5, 1980. Defendants each have had an "estate" as defined in Ark. Stat. Ann. § 46-1702 (d) (Supp. 1983). Defendant Shelton's estate consists of monies from Veteran's Administration

benefits; Defendant Bennett's estate consists of social security benefits. The amounts of these estates at the present date of June 16, 1985 are as follows:

(1) Bennett has $4,000 that is in the custody of the Department of Correction. The money in excess of that amount was released to Mr. Bennett upon discnarge.

(2) Shelton has no money at this time but has the ability to begin receiving his VA benefits.

B. The components of the "cost of care" are set out in Ark. Stat. Ann. § 46-1702(c) (Supp. 1983). The parties in this case have stipulated as to the amount it has cost the Department to keep each defendant incarcerated. This court finds the stipulation to accurately reflect the cost of care. The cost of keeping each defendant from June 17, 1981, the effective date of the act, until the date of August 30, 1984, was as follows:

BENNETT	SHELTON
$27,091.72	$24,078.61

The parties agree that both Bennett and Shelton worked jobs within the department while incarcerated and did not receive any renumeration for their work.

C. This court has taken into consideration other obligations; both legal and moral, of these defendants, as contemplated by Ark. Stat. Ann. § 46-1704 (Supp. 1983), and finds the amount each defendant should pay to the State out of his present estate for his cost of care is as follows:

BENNETT	SHELTON
$4,000-less the amount set forth below.	He has no money at this time but—in the event his VA benefits are renewed, the state is awarded the full amount of Mr. Shelton's monthly benefits minus $25.00 per week.

D. This court further finds that the State should continue to be reimbursed out of these funds as they are received by the defendants for any future time in which the defendants are

incarcerated in the Department of Correction for violations of parole, or otherwise. In this regard the court finds that the State is allowed to recover its cost of care as it becomes due in the future as contemplated by Act 715, except that each defendant is allowed to retain $25.00 per week out of these amounts.

5. The Court further finds that in the event this case is appealed, the amount awarded to the State is reduced by five hundred dollars ($500.00) for attorneys fees, and an additional one hundred dollars ($100.00) if defendant's counsel is required to pay a filing fee with the Arkansas Supreme Court.

The Court further finds that in the event of appeal if the judgment of this court is affirmed, the sums withheld from either defendant subject to the amounts withheld in ¶5 above, plus interest from the date of judgment shall go to the State. If the judgment is reversed the same principal and interest shall go to the contributing plaintiff. Interest shall be at the rate of 10% per annum from the date of judgment.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED, that plaintiff be awarded the amount of $4,000 against Defendant Bennett, subject to amounts set out above, and that plaintiff be awarded the monthly VA Benefits of Defendant Shelton, less $25.00 per week, for the length of his stay in the Department of Correction.

/s/ Perry Whitmore
PERRY WHITMORE
CIRCUIT JUDGE

Approved as to form:

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COUNSEL FOR DEFENDANTS

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

SECOND DIVISION

No. 83-357
No. 83-360

STATE OF ARKANSAS

Plaintiff

v.

GEORGE E. BENNETT, EVERETT E. SHELTON

Defendants

FILED Nov. 26, 1985

ORDER

On this date the Court has pending before it a motion of counsel to consolidate the above matters. Because it involves the same statute, and for other good cause, the Court finds that consolidation is appropriate.

IT IS THEREFORE CONSIDERED, ORDERED & ADJUDGED, that the above style actions be, and hereby are, consolidated for trial and any further action.

IT IS SO ORDERED this 26th day of November, 1985, *nunc pro tunc* to October 28, 1983.

/s/ Perry Whitmore
PERRY WHITMORE
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

SECOND DIVISION

(title omitted in printing)

No. 83-357
No. 83-360

FILED Nov. 26, 1985

NOTICE OF APPEAL, DESIGNATION OF THE RECORD, & JURISDICTIONAL STATEMENT

Come the defendants, George E. Bennett & Everett E. Shelton, and for their notice state:

1. Defendants appeal the judgment in the above matter to the Supreme Court of Arkansas.

2. Defendants assert that the Arkansas Supreme Court has jurisdiction over this matter because concerns the validity and constitutionality of a statute of the Arkansas legislature. Ark.S.Ct.R. 29.1(c).

3. Defendant designates as the record on appeal the following:

(a) The Complaints filed in both actions on January 14, 1983.

(b) The January 14, 1983, orders freezing the defendants funds.

(c) The February 9, 1983, answer filed in 83-357.

(d) The Consolidated Answer filed November 23, 1983.

(e) The Motion to Consolidate filed November 23, 1983.

(f) The Order of Nonsuit filed November 23, 1983.

(g) The Trial Brief filed January 9, 1984.

(h) The Reply Brief filed January 16, 1984.

(i) The Memorandum in Reply filed January 27, 1984.

(j) The Stipulation filed November 23, 1983.

(k) The Nunc Pro Tunc Order of Consolidation

(l) The Judgment

(m) The Notice of Appeal

4. Defendants assert that since the record in this matter will consist of pleadings and stipulations, there is no need to notify the Court reporter.

5. Defendants further assert that this Notice of Appeal is timely. Ark.R.App.P. 4(a)

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/s/ Thomas M. Carpenter
THOMAS M. CARPENTER

(Certificate of Serivce omitted in printing)

SUPREME COURT OF ARKANSAS

No. 86-38

GEORGE S. BENNETT AND EVERETT SHELTON,
Appellants,

v.

STATE OF ARKANSAS,
Appellee.

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SECOND DIVISION;

OPINION DELIVERED September 29, 1986

ROBERT H. DUDLEY, Associate Justice

The Attorney General's office filed this suit seeking to obtain reimbursement for the State for maintaining appellants as inmates in the Department of Correction. The action was filed pursuant to the "State Prison Inmate Care and Custody Reimbursement Act." Ark. Stat. Ann. §§ 46-1701 to -1707 (Supp. 1985), which provides that when an inmate is found to have an "estate," the State may have a guardian of the estate appointed, and the estate may be liable to the State for the inmate's room, board, clothing, and medical expenses. "Estate" is defined as including payments from the Social Security Administration or any other pensions or retirement benefits. Appellant Bennett's estate consisted solely of funds he received from Social Security retirement benefits, and appellant Shelton's estate consisted of funds received from the Veterans' Administration disability benefits. Bennett objects to subjecting his estate to liability because the Social Security Act provides that "none of the moneys paid . . . shall be subject to . . . levy . . . or other

legal process." 42 U.S.C.A. § 407. Similarly, Shelton contends the veterans' statute protects his estate from the State's action. It provides, "Payments . . . shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." 38 U.S.C.A. § 3101(a). The trial court found that the appellants' estates were subject to legal process in these cases, and, after using the formula provided in Ark. Stat. Ann. § 46-1704(b), ordered part of the estates to be paid to the State. We affirm.

Appellants contend that the State act is in conflict with the federal acts, and under the Supremacy Clause of the Constitution of the United States the federal acts must prevail. If the acts were in conflict, the federal acts would clearly prevail under the Supremacy Clause. *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413 (1973). However, there is no conflict because the federal statutes contain an implied exception to the exemption from legal process when the State provides for the care and maintenance of a beneficiary of social security or veterans' funds.

As set out in *Department of Health* v. *Davis*, 616 F.2d 828 (5th Cir. 1980), the purpose of social security benefits is to provide for the care and maintenance of the beneficiaries. The exemption of benefits from creditors' actions was enacted as part of the original social security legislation. Pub. L. No. 74-271, § 208, 49 Stat. 622, 625 (1935). This exemption evidences a clear legislative philosophy of precluding beneficiaries from diverting their social security benefits away from the statute's seminal goal of furnishing financial, medical, rehabilitation, or other services to needy individuals. 42 U.S.C.A. § 301. The benefits are paid for the purpose of assuring the beneficiaries' care and maintenance, and the State seeks to do nothing more than apply them to the cost of appellant Bennett's care. Neither the purpose of the benefits, nor the purpose of the exemption is accomplished by barring the State from recovering.

Likewise, veterans' payments "are intended primarily for the maintenance and support of the veteran." *Lawrence* v. *Shaw*, 300 U.S. 245, 250 (1937). Accordingly, the veterans' benefit exemption was held inapplicable where a state sought reimbursement for the expenses of continuous hospitalization of a mentally ill dependent of a veteran where the dependent's entire estate consisted of monthly pension payments received by a guardian. *In re Lewis' Estate*, 287 Mich. 179, 283 N.W. 21 (1938). In that case, the Supreme Court of Michigan, at page 24, wrote:

> The very purpose of a pension, such as in this case, is to provide support for the beneficiary and, in this proceeding for reimbursement, the state, under the statute, is asking no more than the pension was given to provide.
>
> We are not here concerned with actions by creditors seeking to turn the pension to satisfaction of their demands, but only with the question of reimbursement of the state for care and maintenance. Certainly the pension protective law does not intend the fund for the welfare of the beneficiary and then, under restrictions thereof, after receipt by the beneficiary, prevent employment thereof for care and support of the pensioner.

The reimbursement of the state for the care and maintenance of the beneficiaries of these two federal programs is entirely consistent with the thrust of the federal legislation.

The appellants contend that the case of *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413 (1973), dictates reversal of the trial court. In *Philpott*, the Court rejected a state welfare agency's claim for reimbursement from a welfare recipient's disability benefits and noted the exemption was phrased in broad terms:

> On its face, the Social Security Act in § 407 bars the State of New Jersey from reaching the federal disability payments paid to Wilkes. The language is all-inclusive: "[N]one of the moneys paid or payable . . . under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process. . ."

However, the First Circuit Court of Appeals recognized that a fundamental distinction exists between cases such as the one at bar and *Philpott*. That court distinguished *Philpott* as follows:

> With regard to the social security statute, the Supreme Court in *Philpott* v. *Essex County Welfare Board*, 409 US 413; 93 S Ct 590; 34 L Ed 2d 608 (1973), precluded a state from recovering financial assistance rendered to a person claiming permanent and total disability. *Philpott* is different from this case, however, since there the welfare recipient was capable, at least in part, of providing for his own care, and the state was not acting *in loco parentis*, as it is here. The beneficiary in *Philpott* was merely receiving assistance in providing for himself. Glasscock, however, determined to be incompetent by the Veterans' Administration since February 21, 1952, has been in confinement until the present because he is apparently incapable of caring for himself to any degree. Glasscock *has had no needs during the period he has been in the Florida State Hospital that were not met by the state*. Accordingly, the state is seeking to have the guardian, who is responsible for overseeing her ward's care and maintenance, do what is required by Florida law; apply the benefits received by the ward for care and maintenance to reimburse Florida for undertaking his care and maintenance. Thus, contrary to the guardian's argument, *Philpott* does not control the outcome of this case.

Department of Health v. *Davis*, 616 F.2d 828, 830 (5th Cir. 1980). (Emphasis added.)

The Court of Appeals of Michigan followed the Fifth Circuit and recognized the same distinction. *Department of Correction* v. *Brown*, 125 Mich. App. 620, 337 N.W.2d 23 (1983). Similarly, we do not find that *Philpott* controls the cases at bar because here the State provided the care and maintenance for the beneficiaries.

Appellants' final contention is that because we liberally construe exemptions, we must reverse the trial court. We find no merit in the argument. It is true that we do liberally construe exemptions from legal actions on pensions when creditors who

have not provided for the care and maintenance of a beneficiary seek to turn the pension to the satisfaction of their demands. *Waggoner* v. *Games Sales Co.*, 288 Ark. 179, ___ S.W.2d ___ (1986). Such actions by creditors if allowed, would keep the imprudent beneficiary from caring and maintaining himself. Here, we are not concerned with an action which could prevent a beneficiary from caring and maintaining himself; instead, we are concerned only with the question of reimbursement of the State for care and maintenance.

Affirmed.

Purtle, J., dissents.

DISSENT

JOHN I. PURTLE, Associate Justice

In my opinion the Supremacy Clause of the United States Constitution requires this Court to declare Ark. Stat. Ann. § 46-1701 *et seq.* to be ineffective in attempting to make Veterans' Administration disability retirement benefit and Social Security retirement benefit funds subject to garnishment and/or execution. Were it not for the fact that the recipients of the disability payments, here in question, were imprisoned, I believe the decision of this Court might well have been different. I believe the case of *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413 (1973) is controlling. I can see no implied exception to the exemption in *Philpott*. I agree with the majority that both Veterans' Administration disability benefits and Social Security retirement benefits are intended primarily for maintenance and support of the retiree. Medical expenses and other personal obligations are also included in the recipients' anticipated costs of living. However, in enacting these laws the United States Congress unquestionably, by the clear and express language of the statutes, intended the recipients to be the owners of such funds and that no one, even judgment creditors, could take these funds away from the beneficiaries.

The Veterans' benefit exemption is set out in 38 U.S.C. § 3101 as follows:

> Payments of benefits due or to become due under any law administered by the Veterans' Administration . . . shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, *either before or after receipt by the beneficiary*. . . .

(Emphasis added).

In the recent decision of *Waggoner* v. *Games Sales Co.*, 288 Ark. 179, ___ S.W.2d ___ (1986), this Court apparently recognized the Supremacy Clause when it declared Civil Service retirement benefits were not subject to a writ of garnishment on a judgment. The Civil Service Retirement Disability Fund exemption, 5 U.S.C.A. §8346(a), uses about the same language as the Veterans' Administration disability benefit and Social Security benefit funds use to exempt those funds from the attachment process. In *Waggoner* we stated, "[w]e are of the opinion that the better rationale is to follow the clear language of the statute and to hold that the money which came from disability payments by the Civil Service Retirement System is exempt from garnishment by a judgment creditor under the provisions of 5 U.S.C.A. §8346(a)." I see no reason to change the clear logic of that decision.

The majority opinion in the present case is precedent for allowing judgment creditors, who have furnished food, clothing, lodging, and other items of the costs of living to recipients of Veterans' benefits and Social Security benefits, to garnish such benefits. I find the majority opinion to be entirely inconsistent with the clear and unambiguous language of the federal statutes creating these exemptions in favor of the beneficiaries. Any change in the law should come from Congress.

I would reverse and dismiss.

Supreme Court of the United States

No. 86-6124

GEORGE S. BENNETT,

Petitioner

v.

ARKANSAS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 13, 1987

PETITIONER'S

BRIEF

No. 86-6124

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

GEORGE E. BENNETT,

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Arkansas

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether a state statute, that requires prisoners to pay part of the costs of incarceration and permits the attachment of federal pension benefits, is contrary to the provisions of federal nonattachment statutes and violates the Supremacy Clause in Article VI, Clause 2 of the United States Constitution?

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OPINIONS BELOW

The opinion of the Supreme Court of Arkansas is reported at *Bennett* v. *State*, 290 Ark. 47, 716 S.W.2d 755 (1986) [J.A. 21]. The memorandum decision of the Pulaski Circuit Court, Second Division is not reported [J.A. 13].

JURISDICTION

The jurisdiction of this Court rests upon 28 U.S.C. §§ (2) & (3). The judgment of the Supreme Court of Arkansas was entered on September 29, 1986. No petition for rehearing was filed. The mandate was stayed by order dated October 27, 1986. The petition for writ of certiorari was filed on December 27, 1986. The petition was granted on October 13, 1987.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI, Cl. 2 (Supremacy Clause) of the United States Constitution provides in pertinent part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

42 U.S.C. § 407 provides in pertinent part:

> The right of any person to any future payment under this title shall not be . . . subject to . . . levy, attachment, garnishment, or other legal process. . . .

Ark.Stat.Ann. § 46-1702(d) (Supp.1985) provides in pertinent part:

> "Estate" shall mean any properties . . . belonging to or due an inmate confined to an institution of the Department of Correction, including . . . Social

> Security . . . or . . . pensions or retirement benefits, or other [income] from any source whatsoever. [Explanation added].

Ark.Stat.Ann. § 46-1704(a) (Supp.1985) provides in pertinent part:

> Whenever it shall be found that any person has been admitted to a penal facility of the Department of Correction as a prisoner, the Attorney General . . . shall, if such person or prisoner be possessed of any estate . . . petition the circuit court of the county from which said person was sentenced, stating . . . that said estate may be subjected to the payment to the State of the expenses paid and to be paid by it on behalf of said person as a prisoner. . .

STATEMENT OF THE CASE

George Bennett ("Bennett") had worked a sufficient number of quarters to qualify for Social Security retirement benefits upon reaching age 62. He became eligible for these benefits while incarcerated in the Arkansas Department of Correction ("ADC") for a term of 21 years on a charge of murder in the second degree. [J.A. 11]

In order to defray the costs of operating the prisons, Arkansas requires prisoners to work.[1] Often prisoners work, as did Bennett, seven days a week for as many as 12 hours a day. They receive no remuneration for this labor. [J.A. 11].

In 1981 the Arkansas General Assembly passed legislation requiring reimbursement from incarcerated pris-

[1] Ark.Stat.Ann. § 46-117 (Supp.1985). In addition, various appropriations acts for the ADC have included provisions that inmate labor shall be used to help defray the cost of construction of buildings at the prison. *See e.g.*, § 5(B), 1987 Ark.Acts 427.

oners with the financial means to pay for their cost of care ("reimbursement").[2] Pursuant to the provisions of this statute, on January 17, 1983, the Attorney General brought suit against three persons in the Pulaski Circuit Court, Second Division. The named defendants were Bennett, Roosevelt Johnson and Everett E. Shelton.

Bennett's estate consisted of approximately $1800.00 in noncommingled Social Security retirement benefits. Johnson's estate comprised of noncommingled Social Security retirement benefits.[3] Shelton's inmate account contained noncommingled Veteran's Administration disability pension benefits. (J.A. 11-12).[4]

The Complaint and an *ex parte* Order seizing Bennett's funds were filed on January 14, 1983. [J.A. 2, 5] Present counsel entered an appearance in November, 1983, and a Consolidated Answer was filed on November 9, 1983. [J.A. 6]

[2] 1981 Ark.Acts 715 [codified as Ark.Stat.Ann. § 46-1701 (Supp.1985)]. This act was entitled the "State Prison Inmate Care and Custody Reimbursement Act". It will be referred to as the "reimbursement statute" throughout the balance of this brief.

[3] Johnson, who was serving a sentence of life imprisonment on a charge of murder in the first degree, died prior to the entry of judgment in this case. The funds being held by ADC were released to his family to assist with burial expenses.

[4] The fact that none of these funds were commingled negated any requirement that the defendants establish that these were federal pension benefits. *See Trotter* v. *Tennessee*, 290 U.S. 354 (1933). Because the federal pension benefits were placed in inmate accounts and were not commingled with other monies, nor were invested in other endeavors, the protection of the exemption statutes remained inviolate. *Porter* v. *Aetna Cas. & S. Co.*, 370 U.S. 159, 162 (1962).

In the Consolidated Answer Bennett challenged the constitutionality of the Act on several grounds. These included assertions that: (1) the Act violated the Supremacy Clause of the U.S. Constitution because it permitted a state to attach funds that federal law exempted from legal process; (2) the Act was an *ex post facto* penalty imposed on prisoners like Bennett convicted prior to the effective date of the Act; (3) the Act denied the prisoners Due Process of Law in violation of the Arkansas and the U.S. Constitutions; (4) the Act violated the Fourteenth Amendment Equal Protection Clause because it permitted a trial judge the discretion to order different payments from similarly situated defendants. [J.A. 6-8]

The Honorable Perry V. Whitmore heard the matter without a jury. The case was submitted upon oral arguments of counsel, a stipulation of facts, and memoranda briefs. Judge Whitmore concluded that Bennett's federal pension funds could be attached since the ADC was using these monies for his care and maintenance. [J.A. 14][5] The Judge also ruled that Bennett could withdraw $25.00 a week from his inmate account to pay for any incidental expenses he had at the prison. [J.A. 16]

Bennett appealed that portion of the judgment rejecting his Supremacy Clause argument. [J.A. 19][6] The

[5] This ruling relied upon cases that had used this rationale to avoid this Court's holding in *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. 316 (1973); *see Dept. of Correction* v. *Brown*, 337 N.W.2d 23 (Mich.1983); *Dept. of Health* v. *Davis*, 616 F.2d 828 (5th Cir.1980). The Court also relied on a pre-*Philpott* decision of the Arkansas Supreme Court. *Cruce* v. *Arkansas State Hospital*, 241 Ark. 680, 409 S.W.2d 342 (1966).

[6] The appeal was taken pursuant to Ark.Sup.Ct.R. 29.1(c). Under this rule, the Arkansas Supreme Court has appellate jurisdiction in all cases challenging the constitutionality of a state statute.

Arkansas Supreme Court affirmed Judge Whitmore's holding on the same rationale: since the State was acting *in loco parentis* in relation to prisoners, federal pensions intended for the care of prisoners could be seized. *Bennett* v. *State*, 290 Ark. 47, 51, 716 S.W.2d 755, 757 (1986). Although it never actually acknowledged a conflict between the language of the state and federal statutes, the Supreme Court found an "implied exception" to the federal exemption statutes. 290 Ark. at 49, 716 S.W.2d at 756. In the view of the Arkansas Supreme Court, this implied exception permits reimbursement for expenses to entities providing for a beneficiary's care. *Id.*

Bennett's term of imprisonment ended prior to this appeal. However, the ADC still holds approximately $4000.00 of his money pending the outcome of this case.

In April, 1983, Congress amended the Social Security Act to preclude payment of retirement benefits to certain incarcerated persons. 42 U.S.C. § 402(x). If a person is incarcerated for a felony conviction, is not involved in a rehabilitation program, and is not subject to release within a reasonable period of time, then the payment of benefits is suspended. *Id.* Notwithstanding this limitation, about half the monies held by AOC represent Social Security payments to which Bennett is entitled because they were made prior to the effective date off this amendment. The balance represents monies to which he is now entitled.[7]

[7] Upon release Bennett was again entitled to receive retirement benefits. Because he had continued to receive benefits from May, 1983, to December, 1984, the Social Security Administration recouped this overpayment by withholding payments to Bennett after his release from prison. At the time this brief is being filed, Bennett has just completed this repayment and is now receiving full retirement benefits. If there was any question about the character of the monies being held by ADC it is now clear that all the monies represent Social Security retirement benefits to which Bennett is entitled.

SUMMARY OF THE ARGUMENT

The Arkansas Supreme Court ruled that a state statute providing for reimbursement of the cost of a prisoner's care from that prisoner's federal retirement benefits is constitutional despite a federal statute exempting these benefits from any legal process. This ruling is contrary to the provisions of the Supremacy Clause. Art. VI, Cl. 2, U.S. Const.

When the provisions of a state statute conflict with a federal statute, the Supremacy Clause of the U.S. Constitution mandates that the federal statute prevail. *Rose* v. *Arkansas State Police*, ___ U.S. ___, 107 S.Ct. 334 (1986); *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

The language and meaning of the state reimbursement statute at bar are in clear conflict with the federal exemption statute. Since this conflict is clear from the language of the respective statutes, the Supremacy Clause mandates that the state statute fall. *Rose* v. *Arkansas State Police*, ___ U.S. at ___, 107 S.Ct. at 335; *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. 413 (1973).

Even if the conflict in language was not dispositive of this case, the state statute must fall because it substantially interferes with the purpose of the federal exemption statutes. *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. 413 (1979); *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572 (1979).

The finding of an "implied exception" to the federal exemption statutes is not appropriate in this case. This case is not similar to family law cases in which this Court has examined whether an exception to the exemption statutes is appropriate. *Rose* v. *Rose*, ___ U.S. ___, 107 S.Ct. 2029 (1987).

Because only Congress can best determine how federal retirement benefits should be allocated, only Congress

should determine the exceptions to the exemption statutes.

The decision of the Arkansas Supreme Court must be reversed because the state reimbursement statute clearly conflicts with the language, meaning and purpose of the federal exemption statutes. In such a situation the Supremacy Clause requires that the state statute be deemed invalid to the extent of the conflict.

ARGUMENT

Bennett seeks reversal of a decision of the Arkansas Supreme Court permitting the State to seize his Sociai Security retirement benefits despite federal statutes exempting these benefits from attachment by any legal process.[8] The thrust of his argument is that under the Supremacy Clause the federal statute exempting these benefits from legal process prevails over the state statute permitting seizure. Art. VI, Cl.2, U.S. Const. This argument was rejected by the Arkansas Supreme Court. *Bennett* v. *State*, 290 Ark. 47, 716 S.W.2d 755 (1986).

In 1981 the State of Arkansas, in an attempt to help defray the cost of maintaining a constitutional prison system, created a legal process that permitted the seizure of any estate a prisoner possessed. Ark. Stat. Ann. §§ 46-1701 *et seq* (Supp. 1985) ("reimbursement statute") Similar legislation has been in effect in some states for at

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[8] Shelton was serving a term of fifteen years on a charge of theft of property. At the time judgment was entered there were no more funds in his account. [J.A. 15]. He has since been released from prison on parole. Counsel's efforts to contact Shelton were unsuccessful. Because Shelton did not complete an affidavit to accompany his motion to proceed *in forma pauperis*, the Clerk only docketed Bennett's petition.

least 50 years.[9] Arkansas specifically defined "estate" to include a prisoner's right to Social Security benefits. The term also applies generally to any other type of pension or retirement benefits. Ark.Stat.Ann. § 46-1702(d) (Supp. 1985). This state statute on its face conflicts with federal legislation protecting Social Security retirement benefits from being subjected to any legal process. 42 U.S.C. § 407. ("exemption statutes")[10]

When the federal government has the right to legislate in a particular area, the Supremacy Clause mandates that a federal statute prevail over the provisions of a conflicting state statute. *Hines* v. *Davidowitz*, 312 U.S. 52, 62-63 (1941). While the Arkansas Supreme Court recognized this rule, it failed to discern any tension between the reimbursement statute and the exemption statutes. *Bennett* v. *State*, 290 Ark. at 49, 716 S.W.2d at 756 (1986). Instead, the Arkansas Supreme Court concluded that the two statutes did not conflict because their purpose was

[9] Michigan approved the first known reimbursement statute in 1935. Mich.Pub.Acts 253 [codified as Mich.Comp.Laws § 800.401 *et seq* (West 1982 & Supp.1987); *see also*, Ohio Rev. Code §§ 307.93(D), 341.14, 241.19, 753.02(B), 753.04(B), 753.16(C), 2301.56(B)(Anderson 1979 & Supp.1986); Okla.Stat.Ann.tit.57 § 542 (West.Supp.1987); Tenn.Code.Ann. §§ 41-21-216 *et seq* (1982).

[10] The state reimbursement statute could also be used to attach other federal retirement benefits protected by similar exemption statutes. *See* 5 U.S.C. § 8346(a) (civil service retirement); 38 U.S.C. § 3101(a) (veteran's administration benefits); 45 U.S.C. § 231m (railroad retirement). These statutes will be referred to as "exemption statutes" throughout the balance of this brief. Further, the state reimbursement statute would apparently permit the Attorney General to obtain a judgment attaching military retirement benefits [10 U.S.C. §§ 3911; 3929] despite this Court's ruling in *McCarty* v. *McCarty*, 453 U.S. 210 (1981).

the same—i.e., to provide for the care and maintenance of a prisoner.[11]

Moreover, the Arkansas Supreme Court concluded that *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413 (1973) did not preclude recognition of an implied exception to the exemption statutes for State care and maintenance of its prisoners. *Bennett* v. *State*, 290 Ark. at 49, 716 S.W.2d at 756. *Philpott*, of course, held just the opposite: absent a clear indication to the contrary, there are no implied exceptions to federal exemption statutes that justified reimbursement to a State for fulfilling its statutorily required obligations. *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. at 416. Arkansas law requires the ADC to provide for the care and custody of prisoners. Ark.Stat.Ann. § 46-103 (Repl.1977).

Only when state family law has come into conflict with a federal statute has this Court bordered on recognizing an "implied exception" to federal exemption statutes. In these instances, review under the Supremacy Clause focuses on whether there exists a clear statement of Congressional purpose to pre-empt state law. *Rose* v. *Rose*, ___ U.S. ___, ___, 107 S.Ct. 2029, 2033 (1987). But, this Court has never held that "compatibility with the purpose of a federal statute can save a state law that violates its

[11] This, of course, is not an accurate statement of the purpose Congress has given for Social Security benefits. Congress has stated that the benefits are for the care and maintenance of the beneficiary and his family. It is a contributory insurance program "designed to prevent public dependency by protecting workers and their families," from common economic disasters. H.R.Rep.No.615, 74th Cong., 1st Sess, 1 (1935). This Court has stated the purpose was to provide "basic protection against hardships created by the loss of earnings due . . . to old age." *Mathews* v. *DeCastro*, 429 U.S. 181, 185-86 (1976).

text." ___ U.S. at ___; 107 S.Ct. at 2041 (Scalia, J., dissenting). The Court should not use this case to extend this limitation beyond the family law context.

The provisions of the Arkansas reimbursement statute clearly violate the text and purpose of the federal exemption statutes. If this Court affirms the Arkansas Supreme Court it will mean that a State—regardless of the existence of a federal exemption statute—can attach the federal benefits of any person to whom the State is providing care pursuant to a statutory obligation. This Court should reject such a rule and hold that only Congress may determine the exceptions to federal pre-emption statutes, pursuant to the Supremacy Clause.

1. When A Textual Conflict Exists Between A State Statute And A Federal Statute, Or When A State Statute Substantially Interferes With The Purpose Of A Federal Statute, The Supremacy Clause Of The U.S. Constitution Mandates That The Federal Statute Prevail.

The specific federal statute at bar prohibits, in absolute terms, the subjection of Social Security retirement benefits to any legal process:

> The right of any person to any further payment under this title shall not be transferable or assignable, at law or in equity, and *none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process*, or to the operation of any bankruptcy or insolvency law. 42 U.S.C. § 407(a). [Emphasis added]

To assure that no other statutes would be deemed to provide implied exceptions to this exemption statute, Congress added a new subsection in 1983 providing that, absent an express reference to the exemption statute, no

law, regardless of its date of passage, limited the exemption in § 407(a). 42 U.S.C. § 407(b).[12]

Despite this clear prohibition in federal law, the Arkansas Supreme Court found an "implied exception" for cases involving prisoners incarcerated in the ADC. *Bennett* v. *State*, 290 Ark. at 50, 715 S.W.2d at 756.[13] The Court reasoned that Congress did not intend for the exemption statutes to apply to entities providing for the care and maintenance of Social Security recipients.

> The benefits are paid for the purpose of assuring the beneficiaries' care and maintenance, and the State seeks to do nothing more than apply them to the cost of appellant Bennett's care. Neither the purpose of the benefits, nor the purpose of the exemption is accomplished by barring the State from recovering. *Bennett* v. *State*, 290 Ark. at 50, 715 S.W.2d at 756.

While consideration of legislative intent may be appropriate when reviewing a federal statute, a clear conflict

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[12] 42 U.S.C. § 407(b) reads

> No other provision of law, enacted before, on, or after the date of the enactment of this section, may be construed to limit, supercede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

Some bankruptcy courts had concluded that the more recent bankruptcy amendments superceded the federal exemption statutes. *See, e.g., In re Prestien*, 427 F.Supp. 1003 (S.D.Fla.1977); Congress wanted to firmly establish that they did not. 2 U.S.Code.Cong. & Adm.News 443 (1983); *see also*, H.Rep.No. 98-25, 98th Cong., 1st Sess. 82-83. This amendment has been characterized as Congress' "clear and stringent interpretation of the prohibition on transfer or assignment of benefits." *Ellender* v. *Schweiker*, 575 F.Supp. 590, 599 (S.D.N.Y.1983).

[13] Of course, prohibitions established in the clear language of federal statutes cannot be set aside by state statutes. *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U.S. 173, 176 (1942).

between the words of the statutes should not be ignored. *See Rose* v. *Arkansas State Police*, ___ U.S. ___, ___, 107 S.Ct. 334, 335 (1987); *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. at 326. Yet, the Arkansas Supreme Court never directly addressed the obvious conflict in the language of the two statutes.

There is no question that the reimbursement statute is in direct conflict with the federal exemption statute. The State statute expressly defines a prisoner's estate to include Social Security benefits.

> "Estate" shall mean any properties . . . belonging to or due an inmate confined to an institution of the Department of Correction, including . . . *Social Security . . . or : . . pensions or retirement benefits*, or from [income] from any source whatsoever. Ark.Stat.Ann. § 46-1702(d) (Supp.1985). [Emphasis added] [Explanation added]

If the Attorney General determines that a prisoner has Social Security benefits in his estate, the statute mandates that a petition be filed requesting an attachment of these benefits. Ark.Stat.Ann. § 46-1704(a) (Supp.1985). This attachment reimburses the State for the cost of a beneficiary's care.

In sum, the reimbursement statute requires that Social Security monies that have been paid, or are payable, to a prisoner be subjected to "execution, levy, attachment . . . or other legal process."[14] Ark.Stat. Ann. § 46-1704(a) (Supp.1985). The conflict is obvious. The federal statute guarantees Social Security recipients that their retirement benefits are protected from any legal process. The State statute mandates that these retirement benefits be seized if the recipient is a state prisoner. Under the

[14] 42 U.S.C. § 407(a).

Supremacy Clause, the state statute is pre-empted because it clearly conflicts with federal law on its face. *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. at 415.

The Supremacy Clause invalidates all state laws that are in conflict with, or that interfere with, an act of Congress. *Rose* v. *Arkansas State Police*, ___ U.S. at ___, 107 S.Ct. at, 335; *Hayfield Northern R. Co.* v. *Chicago & N.W. Transp. Co.*, 467 U.S. 622, 627, n.5 (1984); *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 41 (1824). Pre-emption questions arise in a variety of contexts. Pre-emption is mandated when the specific language in federal and state statutes are in plain conflict. *McDermott* v. *Wisconsin*, 228 U.S. 115 (1913).[15]

In a case of textual conflict, if the respective meanings of the federal and state statutes are clear, and the conflict between the meanings is also clear, there is no need to look further to determine that federal law prevails. *Rose* v. *Arkansas State Police*, ___ U.S. at ___, 107 S.Ct. at 335; *see also*, *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. at 415.[16]

[15] The doctrine of pre-emption also applies when federal involvement in a particular area precludes state action, because the federal government is deemed to have "occupied the field" of regulations. *Motor Coach Employees* v. *Lockridge*, 403 U.S. 274 (1971).

[16] There is a narrow exception to the rule that a direct conflict in the language means the federal statute prevails under the Supremacy Clause. In the family law context, the Court has repeatedly declined to intervene in a regulatory area deemed a unique problem to the states. In this context "[a] mere conflict in words is not sufficient . . . ." to answer a Supremacy Clause challenge. *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 581 (1979). Before federal pre-emption occurs in this limited context, the state law must do "major damage" to "clear and substantial" interests of the federal government. 439 U.S. at 581; *see also*, *Rose* v. *Rose*, ___ U.S. at ___, 107 S.Ct. at 2033; *United States* v. *Yazell*, 382 U.S. 341, 352 (1966). *See discussion infra at* 18.

The fundamental error in the opinion of the Arkansas Supreme Court is that it attempted to glean legislative intent without reviewing first the clear language of the exemption statutes. The Court ignored the primary maxim of the pre-emption doctrine that textual conflict is determinative. *Ex parte Collett*, 377 U.S. 55 (1949).

Simple review of statutory language, however, is sometimes not enough. In those instances when review of respective statutory language does not provide a clear answer to a Supremacy Clause question, it is appropriate to analyze the Congressional purpose underlying the federal statute. If the Congressional purposes are compromised by the state legislation, the Supremacy Clause will require invalidation of the state legislation to the extent of the conflict.

In short, the first determination is whether the language of the two statutes is obviously in conflict. If so, the federal statute prevails. When necessary, the Court will go beyond the language to discern the purpose for the federal legislation to determine if there is a conflict with the state act. If from this review the Court is assured that the federal statute should control, then the state statute must be invalidated to the extent of the conflict.

Assuming *arguendo* that a clear conflict in the text of the federal and state statutes does not dispose of this case, the Court must inquire whether the purpose of the federal legislation conflicts with, or is substantially compromised by, the purpose of the state legislation. *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 583 (1979). If the answer to this inquiry is "yes," the state statute must fall.

Despite a relatively sparse legislative history, it is clear that Congress did not intend for federal pension benefits to be subject to legal process absent specific federal legislation to the contrary. 42 U.S.C. § 407(b); H.R.Rep.No. 98-25, 98th Cong., 1st Sess. 82-83 (1983). Hence, the reimbursement statute is in conflict with the purpose of the exemption statutes and must be set aside.

The general purpose behind Social Security retirement benefits is to protect beneficiaries and their families from economic hardship "created by the loss of earnings due . . . to old age." *Mathews* v. *DeCastro*, 429 U.S. 181, 185-86 (1976). H.R.Rep.No. 615, 74th Cong., 1st Sess. 1 (1935). The amount of a recipient's benefits is authorized by Congress after careful consideration, and is paid regardless of the recipient's actual needs. *Id.* To assure the recipient the voluntary use and continued availability of these benefits, the exemption statute provides a "broad bar" to secure the benefits from the claims of landlords, grocers, states or other creditors. *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. at 417.[17]

The key is that the purposes of the Social Security Act in general and the exemption statute in particular are relevant to a determination of the potential conflict with the state law. The Arkansas Supreme Court did not engage in this analysis when it concluded that the broad purpose of Social Security benefits is to provide care to

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[17] In affirming Judge Whitmore the Arkansas Supreme Court focused on that aspect of the judgment concerning a state's provision of services to a beneficiary. *Bennett* v. *State*, 290 Ark.at 50-51, 716 S.W.2d at 756-757. The Court never addressed Judge Whitmore's partial reliance on *Cruce* v. *Arkansas State Hospital*, 241 Ark. 680, 409 S.W.2d 342 (1966). *Cruce* was a pre-*Philpott* decision which concluded that a state providing services to an incompetent beneficiary was not a "creditor" under federal law. *Philpott*, of course, concluded that a state is no more than a "creditor," when it seeks reimbursement for having provided statutorily mandated services. 409 U.S. at 416-417.

the recipient. *Bennett* v. *State*, 290 Ark. at 50, 716 S.W.2d at 756. It failed to perceive "the problems Congress is called upon to address and the dynamics" of the legislative process. *Board of Governors* v. *Dimension Financial Corp.*, 474 U.S. 361, 374 (1986).

The Arkansas Supreme Court incorrectly characterized the purpose of Social Security benefits. Congress did not intend merely to pay benefits to provide for the recipient's care. Congress also intended for the benefits to reach the recipient so he could provide for his own care in retirement. *See Hisquierdo* v. *Hisquierdo*, 439 U.S. at 584. Because Congress intended for these benefits to reach the recipient, Congress enacted the exemption statutes. *Id.*[18] The "vagaries of state law" must be prevented from disrupting this national policy safeguarding retirement benefits. *Hisquierdo* v. *Hisquierdo*, 439 U.S. at 584.[19]

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[18] *Hisquierdo* questioned whether Railroad Retirement benefits could be deemed community property for purposes of state family law despite a federal exemption statute. 45 U.S.C. § 231m. Although it dealt with a different statute, this Court found the principles of *Philpott*, which did concern Social Security benefits, to be applicable.

[19] Another reason this Court has clearly held that exemption statutes pre-empt conflicting state statutes is that these federal retirement benefits are not contractual. Congress can eliminate Social Security, Railroad Retirement, Military Pensions, Veteran's Administration benefits, or Civil Service Retirement merely by deciding to do so. *Hisquierdo* v. *Hisquierdo*, 439 U.S. at 575-576. As a result, Congress has jealously guarded its right to decide when exceptions to the exemption statutes are appropriate.

Indeed, Congress has concluded that in the area of child support or alimony, modification of the entire statutory scheme for these benefits was appropriate. *See e.g.*, 45 U.S.C. § 659 (Social Security may be reached to satisfy child support or alimony). Congress has also reserved to itself the right to determine when funds not otherwise subject to legal process may be attached to secure child support or alimony. *See* 10 U.S.C. § 1408(d)(1).

Hence, these benefits are not meant merely to provide for the care and maintenance of the recipient as the Arkansas Supreme Court held. Even if that were the only purpose for the federal statutes, however, the decision of the Arkansas Supreme Court cannot be supported.

The ADC does not continually provide adequate care while prisoners are in its custody.[20] Moreover, upon release on parole prisoners are only given a suit of clothes and a discharge allowance to be used as a travel subsidy. Ark.Stat.Ann. § 46-121 (Supp.1985). No money is provided the paroled prisoner to pay for housing, food, or medical care. Having seized his federal pension benefits while in the prison, the ADC is prepared to deny a prisoner monies the State contends were meant for his care and maintenance when the monies are most needed. Clearly this deprivation of benefits does not fulfill Congress' purpose.

In this case, it is clear that both the language and the purpose of the federal exemption statutes are in direct

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[20] Bennett was not given any input into the kinds of food, clothing, or medical care he was permitted to purchase with these benefits. While the record does not deal with the subject, Bennett believes the State would concede that prisoners will not be permitted to use their own funds as desired for medical care even in situations in which the State refuses to provide that medical care. For example, if a prisoner believes there is a need for cataract surgery and the ADC disagrees, the prisoner will not be able to use his federal retirement benefits to achieve this surgery. This fact only points out further that the ADC does not stand in the prisoner's shoes, nor that it can fairly be said to act as the prisoner's parent. Indeed, the reimbursement statute provides that the benefits will be used to reimburse the state for the medical care it provides as opposed to the medical care provided because of the prisoner's belief it was necessary. Ark.Stat.Ann. § 46-1702(c) (Supp.1985).

conflict with the state reimbursement statute. The decision of the Arkansas Supreme Court must be reversed.

2. Identification Of An Implied Exception To The Federal Exemption Statutes Is Not Appropriate In This Case.

In the limited area of family law, this Court has carved an exception to federal exemption statutes. *Rose* v. *Rose*, ___ U.S. at ___, 107 S.Ct. at 2036. This is the only area in which the Court has made any suggestion that the exemption statutes do not always pre-empt conflicting state law. The Arkansas Supreme Court did not have the benefit of *Rose* when it decided Bennett's case, but even so the narrow holding in *Rose* is not applicable.

Rose v. *Rose* examined whether a contempt citation against a disabled veteran was enforceable, as the veteran could purge the contempt only with monies from Veteran's Administration and Social Security disability benefits. This Court ruled that the contempt order was valid under the facts of the case.

However, the Court based its ruling on a determination that Congress meant for Veteran's Administration disability benefits to extend to the veteran and his family to compensate for lost earning capacity.

> . . . Congress clearly intended veterans' disability benefits to be used, in part, for the support of veterans' dependents. On this basis we may distinguish several of the Court's prior decisions which held that state law governing domestic relations was pre-empted by federal statutes containing prohibitions . . . against attachment, levy or seizure of federal benefits. ___ U.S. at ___, 107 S.Ct. at 2036.

Following this rationale, a state *may* be permitted to subject Social Security retirement benefits to legal process since these benefits are intended for the recipient

and his family. Mathews v. *DeCastro*, 429 U.S. at 185-186. However, access to these benefits is limited to questions involving state family law.

Despite the Arkansas Supreme Court's attempt to equate the ADC with Bennett's family by declaring that it was acting *in loco parentis*, the holding in *Rose* v. *Rose* is still inapplicable. In this case, the ADC does not stand in the shoes of Bennett's family, but is a mere creditor seeking reimbursement for "the cost of providing room, board, clothing, medical, and other normal living expenses" to prisoners. Ark.Stat.Ann. § 46-1701(c) (Supp.1985).

If the ADC were acting as parent to a minor child, then questions about the adequacy of its care could be challenged by the prisoner in state chancery courts like other cases concerning child custody. However, the only way a prisoner can challenge the adequacy of his care is to seek redress in federal court pursuant to 42 U.S.C. § 1983 alleging the deprivation of a constitutional right. *See Estelle* v. *Gamble*. 429 U.S. 97 (1977).

The very type of implied exception from the exemption statutes that was found by the Arkansas Supreme Court was rejected by this Court in *Philpott* v. *Essex County Welfare Bd.*, 409 U.S. at 416. In *Philpott* the State of New Jersey sought reimbursement of monies it had extended pursuant to state law to assist a Social Security beneficiary to meet normal living expenses. This Court clearly rejected the offer to find an implied exception in order to reimburse "a State, performing its statutory duty to take care of the needy." 409 U.S. at 416. To paraphrase, this Court should not find an implied exception to the exemption statutes to reimburse a State that is performing its statutory duty to take care of incarcerated prisoners. *See* Ark.Stat.Ann. § 46-103 (Repl.1977).

Admittedly, Congress has substantially modified an incarcerated prisoner's right to collect Social Security retirement benefits.[21] The scope of the Arkansas Supreme Court's opinion, however, extends beyond this modification. Because the language of the state statute permits attachment of ". . . pensions or retirement benefits, or [income] from any source whatsoever," it equally applies to Railroad Retirement, Civil Service Retirement,[22] Veteran's Administration benefits, and Military Retirement.[23] The Arkansas law simply cannot be permitted to interfere in national policy decisions that are better left to the Congress.

[21] In 1980 Social Security disability benefits were terminated for incarcerated felons not engaged in a work release or rehabilitation program and subject to release within a reasonable period of time. 42 U.S.C. § 423(f)(1). In 1983 this restriction was extended to include retirement benefits. 42 U.S.C. § 402(x).

Similarly, Congress has reduced veteran's administration disability benefits for incarcerated felons to $68.00 per month. 38 U.S.C. § 3113(a)(1)(A). Under the state reimbursement statute, though, even this reduced benefit would be subject to seizure under, the reimbursement statute. Moreover, although Congress has decided that Social Security and Veteran's Administration pensioners are entitled to full benefits while engaged in work release, the reimbursement statute would permit seizure of these funds despite the relevant exemption statutes. 38 U.S.C. § 3101(a); 42 U.S.C. § 407. This seizure would evidently be in addition to the 25% the State collects from any earnings a prisoner makes while in work release. Ark.Stat.Ann. § 46-117 (Supp. 1985).

[22] The Arkansas Supreme Court has ruled that attachment of Civil Service Retirement Benefits by creditors is pre-empted by 5 U.S.C. § 8346(a). *Waggoner* v. *Games Sales Co.*, Ark. 179, 702 S.W.2d 808 (1986). Of course, its ruling in *Bennett* would not prevent seizure of these retirement benefits from prisoners since the Court did not think the State was acting as a "creditor" when seeking reimbursement for the cost of care.

[23] Congress has specifically amended military retirement laws to permit attachment in certain limited circumstances. 10 U.S.C. § 1408(d)(1).

The rationale of the decision of the Arkansas Supreme Court is not limited to incarcerated prisoners. The rationale is premised on the State provision of care and maintenance to the recipient of federal benefits. *Bennett* v. *State*, 290 Ark. at 50, 716 S.W.2d at 756. The scope of this decision includes the mentally handicapped, physically handicapped, or any other group to whom a State is now providing, or should later decide to provide, care and maintenance.

Whether seizure of these federal pensions is consistent with national policy is a matter for Congress alone to decide. Notwithstanding the merits of any argument the State advances for access to these funds, it is for Congress to decide whether seizure of these funds by the states should be allowed. *See Ridgway* v. *Ridgway*, 454 U.S. 46, 63 (1981). If the decision of the Arkansas Supreme Court is affirmed, however, the vagaries of individual States will be permitted to interfere with Congress' right to establish national policy.

It is significant that the lower court precedents affirming seizure of federal benefits have been against those less able to defend themselves. *See Dept. of Correction* v. *Brown*, 337 N.W.2d 23 (Mich.1983); *Dept. of Health* v. *Davis*, 616 F.2d 828 (5th Cir.1980). Should the Court affirm the Arkansas Supreme Court here, it would be tantamount to a license to state courts to amend freely an explicitly Congressional decision about who is entitled to receive and use Social Security benefits.

Congress has already decided that under certain explicit conditions an incarcerated Social Security beneficiary could still receive his benefits. 42 U.S.C. § 402(x).

While *Rose* v. *Rose* could be interpreted to mean that in certain circumstances there is no material difference between the prisoner and his family, it should be obvious that there is a vastly greater difference between the incarcerated prisoner and the State which incarcerates him. To permit the ADC and a prisoner to be regarded as the same entity for the purpose of receiving Social Security benefits essentially would be to repeal the applicable federal statute. This would destroy the integrity of federal laws and the vitality of the Supremacy Clause.

CONCLUSION

Insofar as it permits enforcement of the reimbursement statute in violation of the federal exemption statutes, the decision of the Arkansas Supreme Court must be reversed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

No. 86-6124

GEORGE BENNETT .....*Petitioner*

vs.

STATE OF ARKANSAS .....*Respondent*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR RESPONDENT

STATEMENT OF THE CASE

This is a Supremacy Clause case. Like most Supremacy Clause cases, this case is ultimately a statutory interpretation case. At stake is the ability of the State of Arkansas to make prison inmates, who receive retirement benefits from the Social Security Administration, pay for the cost of food, clothing, shelter and other basic necessities they receive while incarcerated in the Arkansas Department of Correction (hereinafter ADC).

Petitioner George Bennett argues that the Arkansas statutes at issue, Ark. Stat. Ann. §§46-1701—1707 (Supp. 1985) [now codified as Ark. Code Ann. §§12-29-501—507 (1987)], which empower the State to reimburse itself from his accumulated social security retirement benefits, violate the Supremacy Clause of the Constitution, U.S. Const. art. VI, cl.

2.[1] Bennett's argument arises from an apparent conflict between the Arkansas reimbursement statute that enables the State to attach by legal process social security retirement benefits paid to inmates in the ADC and the terms of 42 U.S.C. §407. (Social Security Amendments of 1983, Pub. L. No. 98-21 §335(a), 97 Stat. 130 [codified in 42 U.S.C. §407 (Supp. III 1982)]). Section 407 states that a social security recipient's benefits are not subject to attachment by legal process.

Below, before the Arkansas Supreme Court, Bennett contended that this Court's decision in *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413 (1973) conclusively established that the Arkansas reimbursement statute violated the Supremacy Clause insofar as it was used to attach his social security retirement benefits. Citing the United States Fifth Circuit Court of Appeals' decision in *Dept. of Health v. Davis*, 616 F.2d 828 (1980), the Arkansas Supreme Court distinguished *Philpott* on its facts and held that the reimbursement statute did not violate the Supremacy Clause. *Bennett v. State*, 290 Ark. 47, 716 S.W.2d 755 (1986). According to the Arkansas Supreme Court, the reimbursement statute did not conflict with Section 407, and therefore, it did not run afoul of the Supremacy Clause. The Arkansas Supreme Court concluded that there was no conflict between the state reimbursement statute and the federal nonattachment clause because the reimbursement statute did not interfere with the provision of care and maintenance to Bennett — such provision of care and

[1]Ark. Stat. Ann. §46-1704(a) states that the estate of a person incarcerated in the ADC ". . . may be subjected to the payment to the State of the expenses paid and to be paid by it on behalf of said person as a prisoner." Ark. Stat. Ann. §46-1702(b) defines "estate" as:

> . . . any properties, tangible or intangible, real or personal, belonging to or due an inmate confined to an institution of the Department of Correction, including income or payments to such inmate from Social Security, previously earned salary or wages, bonuses, annuities, pensions or retirement benefits, or from any source whatsoever.

maintenance to Bennett being Congress' objective in providing social security retirement benefits to him. *Id.* at 50, 716 S.W.2d at 756.

SUMMARY OF THE ARGUMENT

State statutes that directly conflict with a federal statute violate the Supremacy Clause. *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712-13 (1985). Also, state statutes that frustrate an underlying objective of a federal statute violate the Supremacy Clause. *Hillsborough, supra*. The state statute at issue empowers the State of Arkansas to attach by legal process the social security retirement benefits of convicted felons who are incarcerated in the Arkansas Department of Correction in order to reimburse the State for its expenses in providing food, shelter, clothing, medical care and other necessities to these inmates. The federal statute at issue, 42 U.S.C. §407 (Supp. III 1982), states that social security benefits shall not be subject to attachment or levy. Pursuant to its reimbursement statute, Arkansas attached $3,400 that was being held in the prison account of inmate George Bennett. Bennett had obtained the money from the Social Security Administration. The Administration had paid Bennett monthly retirement benefits, which he had accumulated in his prison account.

The Arkansas reimbursement statute and Section 407 are not in direct conflict when one considers Congress' overall purpose in establishing the social security retirement benefit program, of which Section 407 is but one section. Congress established the social security retirement system in order to keep workers, retired from the labor force due to old age, from ". . . the rigors of the poor house." *Helvering v. Davis*, 301 U.S. 619, 641 (1937). The Arkansas Department of Correction provided food, shelter, clothing, medical care and other basic necessities to Bennett such that during his period of incarceration he never faced "the rigors of the poor house."

This Court's decision in *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413 (1973), which seems to indicate that the Arkansas reimbursement statute and Section 407 are in direct

conflict, can be distinguished. In *Philpott*, the State's duty to provide welfare assistance to a social security recipient was conditioned on the recipient's agreement to repay to the State whatever financial assistance the State advanced to him, if he should become able to do so. In this sense, the state in *Philpott* was no different than any other creditor. Moreover, given that the social security recipient in *Philpott* was not institutionalized, there was no absolute guarantee that he would use the welfare assistance funds to provide care and maintenance for himself. On the other hand, in the instant case, Arkansas had an unconditional duty, imposed by state statute, to provide food, shelter and other basic necessities to Bennett while he was incarcerated in the Arkansas Department of Correction. Arkansas, acting through the Arkansas Department of Correction, did, in fact, fulfill its statutory obligation. Given this mandatory duty, there is no doubt that Bennett's social security retirement benefits that Arkansas attached were used to provide food, shelter, clothing, medical care and other basic necessities to Bennett. Arkansas' mandatory duty to provide care and maintenance to Bennett was entirely consistent with Congress' intention in establishing the social security retirement benefit program. Arkansas' attachment of Bennett's social security retirement benefits did not in any way interfere with or block the provision of basic necessities to Bennett. Moreover, the Arkansas reimbursement statute does not frustrate any societal objectives that Congress wished to achieve in making social security benefits not subject to attachment by legal process.

ARGUMENT

ARKANSAS' REIMBURSEMENT STATUTE DOES NOT VIOLATE THE SUPREMACY CLAUSE BECAUSE ITS TERMS DO NOT DIRECTLY CONFLICT WITH THOSE OF 42 U.S.C. 407 AND ARKANSAS' REIMBURSEMENT STATUTE DOES NOT FRUSTRATE ANY UNDERLYING OBJECTIVE OF CONGRESS IN MAKING SOCIAL SECURITY RETIREMENT BENEFITS NONATTACHABLE BY LEGAL PROCESS.

A. *The Supremacy Clause.*

It is well established that state statutes that conflict with a federal statute or statutes violate the Supremacy Clause and are invalid. *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712-13 (1985); *Free v. Bland*, 369 U.S. 663, 666 (1962); and *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 186, 210-11 (1824) (Marshall, C. J.). With respect to an alleged conflict between a state statute and a federal statute, a genuine conflict exists when there is an outright or direct conflict between the two or when the state statute obstructs the attainment of any societal goals that the federal statute is aimed toward. *Louisiana Public Service Comm'n. v. F.C.C.*, ___ U.S. ___, 106 S.Ct. 1890, 1898, 90 L.Ed.2d 369, 381-82 (1986); *Hillsborough County, supra* at 713; *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248, 256 (1984); and *Nash v. Florida Industrial Comm'n.*, 389 U.S. 235, 239-40 (1967). In determining whether a state statute actually conflicts with a single federal statute, this Court considers Congress' intent to be "the ultimate touchstone." *Wisconsin Dept. of Industry v. Gould, Inc.*, 475 U.S. 282, 290 (1986) [quoting *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963)]. To decide this case, this Court should first determine whether the terms of the Arkansas reimbursement statute directly conflict with the language

of Section 407; if there is no direct conflict, then this Court should determine whether the Arkansas reimbursement statute obstructs the end that Congress sought to achieve in establishing that social security retirement benefits are not subject to attachment by legal process.

B. *Analysis.*

Arkansas respectfully submits that its reimbursement statute and Section 407 are not in direct conflict. The absence of such a direct conflict is manifest once the purpose of the entire social security retirement benefit program, of which Section 407 is but one section, is examined. Congress' intention in establishing the social security retirement benefit program has been stated by this Court several times: Congress established the social security retirement benefit system in 1935 to protect workers and their dependents from economic hardships due to the loss of income resulting from old age. *Mathews v. DeCastro*, 429 U.S. 181, 185-86 (1976) and *Social Security Bd. v. Nierotko*, 327 U.S. 358, 364 (1945). In *Helvering v. Davis*, 301 U.S. 619 (1937), in writing for the Court, Justice Cardozo summed up the purpose of the social security retirement benefit program as follows: "[t]he hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near." *Id.* at 641. It is undisputed in this case that the ADC has provided food, clothing, shelter, medical care and other basic necessities to Bennett such that he has not had to face "the rigors of the poor house" during his incarceration. *See* J.A. 15 (trial court's finding that Bennett had stipulated to the fact that the ADC had spent $27,091.72 to provide for his care and maintenance from June 17, 1981 to August 30, 1984). Insofar as Bennett has not had to suffer any deprivation of food or shelter because the ADC has provided these basic necessities to him, the *overall* purpose of the social security retirement

benefit program has been achieved by the ADC's provision of life's necessities to Bennett.[2]

At page 17 of his Brief on the Merits, Bennett seems to argue that the ADC did not provide proper care and maintenance to him. If Bennett is advancing such an argument, this Court should not consider it because Bennett has never raised it below — the factual assertions that Bennett makes simply were not part of the stipulated facts that were before the trial court sitting as finder of fact and no other testimony was taken at the trial level. *See* Bennett's Brief on the Merits at page 4. It is well established that a petitioner may not raise an issue for the first time before this Court upon review by writ of certiorari. *Moore v. Illinois*, 408 U.S. 786, 799 (1972) and *Cardinale v. Louisiana*, 394 U.S. 437 (1969).

It is true that the ADC does not provide food, shelter,

[2]Congress' desire to provide food, shelter, medical care and other basic necessities for social security retirement benefit recipients is also evidenced by Congress' complete cut off of social security retirement benefits to incarcerated felons in the Social Security Amendments of 1983, Pub. L. No. 98-21, §339(a), 97 Stat. 133 [codified as 42 U.S.C. §402(x)(1) (Supp. III 1982)]. In interpreting the legislative history of this amendment and a 1980 amendment cutting off social security disability benefits to certain prison inmates (Act of October 19, 1980, Pub. L. No. 96-473, §5(c), 94 Stat. 2265 [originally codified as 42 U.S.C. §423(f)(1) (Supp. IV 1980), now codified as 42 U.S.C. §402(x)(1) (Supp. III 1982)], lower federal courts have consistently held that Congress' intention that social security benefits enable the recipient to obtain food, shelter, medical care and other necessities has been fulfilled by the provision of such basic necessities to the recipient by state prison officials. *Davis v. Bowen*, 825 F.2d 799, 800-01 (4th Cir. 1987); *Wiley v. Bowen*, 824 F.2d 1120, 1122 (D.C. Cir. 1987); *Zipkin v. Heckler*, 790 F.2d 16, 18-9 (2d Cir. 1986); *Washington v. Sec. of Health*, 718 F.2d 608, 611 (3rd Cir. 1983); *Kelbach v. Harris*, 634 F.2d 1304, 1311 (10th Cir. 1980); *Sulie v. Bowen*, 653 F. Supp. 849, 852 (N.D. Ind. 1987); *Hopper v. Schweiker*, 596 F. Supp. 689, 693 (M.D. Tenn. 1984), *aff'd without opinion*, *Hopper v. Secretary*, 780 F.2d 1021 (6th Cir. 1985); and *Anderson v. Social Security Administration*, 567 F. Supp. 410, 412 (Colo. 1983).

housing or medical care to inmates who are outside of the prison on parole. There is, of course, no need for the ADC to provide these necessities to inmates like Bennett who will receive social security retirement benefits while they are on parole. *See* 20 C.F.R. §404.468(c)(1987) (prison inmates are to receive retirement benefits while on parole). The ADC's nonprovision of basic necessities to these inmates does not in any way interfere with Congress' provision of social security retirement benefits to inmates who are paroled out of prison.

As proof of a direct conflict between the terms of the Arkansas reimbursement statute and Section 407, Bennett points to this Court's decision in *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413 (1973). *Philpott* involved a New Jersey social security disability recipient named Wilkes. In 1966 Wilkes applied to the Essex County Welfare Board for welfare assistance on the basis of his total disability. As a condition of receiving welfare assistance from the State, Wilkes was required by state law to execute a reimbursement agreement.[3] In this agreement Wilkes promised to reimburse the Board for its welfare payments to him if he should subsequently acquire any real or personal property. The welfare board referred Wilkes to the Social Security Administration and told him to apply to the Administration for disability benefits. Wilkes did so and was eventually awarded a retroactive lump sum disability payment. Pursuant to the

[3]This state law was N.J. Stat. Ann. §44: 7-14(a) (Supp. 1972-1973). This New Jersey statute stated (and states): "[e]very county welfare board shall require, as a condition to granting assistance in any case, that all or any part of the property, either real or personal, of a person applying for old age assistance, be pledged to said county welfare board as a guaranty for the reimbursement of the funds so granted as old age assistance pursuant to the provisions of this chapter. The county welfare board shall take from each applicant a properly acknowledged agreement to reimburse for all advances granted, and pursuant to such agreement, said applicant shall assign to the welfare board, as collateral security for such advances, all or any part of his personal property as the board shall specify."

reimbursement agreement that Wilkes had signed, the welfare board sought to attach a portion of Wilkes' social security benefits, which were held in trust for him by trustee Doris Philpott. After losing at the trial and intermediate appellate court levels, the welfare board won the right to attach Wilkes' social security disability benefits from the New Jersey Supreme Court in *Essex County Welfare Bd. v. Philpott*, 59 N.J. 75, 279 A.2d 806 (1971). This Court reversed the New Jersey Supreme Court on the basis of the Supremacy Clause. This Court held that the Supremacy Clause was offended because the terms of the New Jersey reimbursement statute were in direct conflict with the nonattachment language of Section 407. *Philpott*, at 413 U.S. 415-16.

Philpott can be distinguished from the instant case. In *Philpott*, New Jersey had no absolute statutory duty to provide welfare assistance to Wilkes. New Jersey had, at best, only a conditional statutory duty to provide welfare support to Wilkes — a duty conditioned on Wilkes *first* agreeing to repay New Jersey for the welfare assistance it provided to him if he should become able to do so. *See* N.J. Stat. Ann. §44:7-14(a), *supra*. In fact, in interpreting Section 44:7-14(a) in its *Philpott* case, the New Jersey Supreme Court characterized the state welfare payment to Wilkes as ". . . an 'advance' subject to repayment." 59 N.J. at 79, 279 A.2d at 808. Given the nature of its conditional statutory duty to assist Wilkes, New Jersey was no different than a bank or some other entity in the lending business that chose to lend money to people with no income and no collateral except the borrower's pledge to repay any cash advance. Because there was no indication in this Court's decision in *Philpott*, or in the three New Jersey court decisions below, that Wilkes was institutionalized, there was no guarantee (other than Wilkes' own poverty) that the welfare funds advanced by New Jersey to Wilkes would be used by him to provide food, shelter and other basic necessities for himself. *See Dept. of Health v. Davis*, 616 F.2d 828, 830 (5th Cir. 1980).

Unlike New Jersey in *Philpott*, Arkansas had a *mandatory*, not conditional, statutory duty to provide food, shelter, medical care and other basic necessities to Bennett while he was incarcerated in the ADC. *See* Ark. Stat. Ann. §46-103(g) (Repl. 1977) [presently codified as Ark. Code Ann. §12-27-103(b)(7) (1987)]. The ADC's provision of basic necessities to Bennett was not like an "advance" made to a promisor by a bank, but was similar to the provision of basic necessities to a child by its parent in that such provision was required by state statute. In the recent case of *Rose v. Rose*, ___ U.S. ___ 107 S.Ct. 2029, 95 L.Ed.2d 599 (1987), this Court held that the Supremacy Clause was not violated when a state court ordered a disabled veteran to pay child support out of the disability benefits he received from the Veterans Administration despite a federal statute almost identical to Section 407 stating that veterans' benefits are not subject to attachment by legal process. This Court's decision in *Rose* rested, in part, on Congress' intention to provide veterans' benefits to support the dependents of disabled veterans. *Rose*, 107 S.Ct. at 2036-37, 95 L.Ed. at 610-11. Likewise, in the instant case Congress' intention that Bennett's social security retirement benefits be used to provide food, shelter and other basic necessities for him was observed by the ADC.[4]

[4]The nonconflict between Arkansas' reimbursement statute and Section 407 was not affected by Congress' 1983 amendment of Section 407 in Act of April 20, 1983, Pub. L. No. 98-21, §325(a)(2), 97 Stat. 130, codified as 42 U.S.C. §407(b) (Supp. III 1982). Congress added this new subsection to Section 407 to legislatively "overrule" several hundred bankruptcy decisions that had held that social security benefits were assignable by the Social Security Administration to a bankrupt social security recipient's trustee in bankruptcy. *See* H.R. Rep. 98-25, 98th Cong., 1st Sess. at 82-3 and H.R. Conf. Rep. 98-47, 98th Cong., 1st Sess. at 153, *reprinted in* 1983 U.S. Code Cong. and Admin. News 301-12, 443. This case does not, of course, involve an assignment of Bennett's social security retirement benefits to a trustee in bankruptcy. Given the facts of this case, Section 407(b) added nothing to the prohibition against attachment by legal process of social security benefits that had been set forth in Section 407(a) in 1935. *See* Act of Aug. 14, 1935, chap. 531, Title II, §208, 49 Stat. 625.

As has been shown above, there is no direct conflict between the terms of Arkansas' reimbursement statute and those of Section 407. Arkansas respectfully submits that there is no underlying societal goal that Congress meant to foster in enacting Section 407. In his brief at page 16 Bennett asserts that in making social security benefits nonattachable, Congress must have meant that the recipient himself was to actually receive the money and spend it himself on his own care and maintenance. Bennett's argument in this regard is erroneous. In the first place, Bennett lost the right to allocate his social security retirement benefits as he saw fit when he was sentenced to prison. Such freedom of choice in making purchases of basic necessities, such as the decision to buy wheat bread rather than rye, is one of the liberties that Bennett forfeited when he committed murder (J.A. 11) and was subsequently tried and punished for his crime. *See Price v. Johnston*, 334 U.S. 266, 285 (1948) (imprisonment brings about the limitation of many privileges and rights); *see also Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 129 (1977) (a prison inmate loses his First Amendment right of association insofar as this right is inconsistent with his status as a prisoner or with legitimate penological objectives). Moreover, Congress has plainly indicated that social security recipients do not have an absolute right to personally receive and disburse their benefits. Since 1939 Congress has intended that in certain instances relatives or other persons may receive social security payments and apply them for the "use and benefit" of the recipient. Act of August 10, 1939, chap. 666, Title II, §205(j), 53 Stat. 1371, amended by Act of Oct. 9, 1984, Pub. L. No. 98-460, §16, 98 Stat. 1809 (codified as 42 U.S.C. §405(j) (Supp. III 1982); *see also* 20 C.F.R. §404.2040(a) (1987). Arkansas did, of course, spend Bennett's social security retirement benefits for his "use and benefit."

C. *Summation.*

Arkansas' reimbursement statute does not offend the

Supremacy Clause. Arkansas' reimbursement statute does not do so because it does not directly conflict with the terms of Section 407 when Congress' overall purpose in providing social security retirement benefits is considered. In providing social security retirement benefits to citizens too old to continue working, Congress intended to provide money to retirees with which they could obtain food, shelter and other basic necessities. The ADC was required by state law to provide these basic necessities to Bennett while he was incarcerated there and did so. The ADC's use of Bennett's social security retirement benefits to provide these basic necessities to him was in keeping with Congress' intention in providing the funds to Bennett. Because the ADC's use of Bennett's social security retirement benefit money was in keeping with Congress' overall purpose in providing the benefits to him, Arkansas' reimbursement statute does not conflict with Section 407. Moreover, 42 U.S.C. §405(j) makes it clear that Congress did not intend that a social security recipient have an absolute right to receive his benefits himself and to disburse them himself. Because the Arkansas reimbursement statute does not directly conflict with the terms of Section 407 and because Arkansas' attachment of Bennett's social security retirement benefits does not frustrate some underlying objective of the social security retirement benefit program, the Arkansas reimbursement statute does not violate the Supremacy Clause and is, therefore, valid.

In closing, Arkansas notes the numerous issues of fact raised by *amicus curiae* Lawrence McDowell with respect to the issue of whether a state may attach the social security disability benefits of a recipient who is committed to a state psychiatric institution. Because there is the possibility that there are significant factual distinctions between the situations of convicts sentenced to prison as punishment and of psychiatric patients, with varying degrees of mental illness, committed to psychiatric institutions for treatment and because the instant case was decided originally on a narrow set

of stipulated facts bearing only on matters of record, Arkansas respectfully suggests that this Court confine its ruling in this case to the fact pattern the case presents: whether a state may attach the social security retirement benefits of an inmate in state prison when the State provides food, shelter and other basic necessities to the inmate, without giving offense to the Supremacy Clause.

CONCLUSION

Respondent, the State of Arkansas, respectfully requests that this Honorable Court affirm the decision of the Arkansas Supreme Court in *Bennett v. State*, 290 Ark. 47, 716 S.W.2d 755 (1986).

Respectfully submitted,

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BRIEF

(9)

No. 86-6124

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In the Supreme Court of the United States

OCTOBER TERM, 1987

GEORGE BENNETT AND EVERETT SHELTON, PETITIONERS

v.

STATE OF ARKANSAS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether 42 U.S.C. (Supp. III) 407 and 38 U.S.C. 3101(a), which preclude the attachment of Social Security benefits and veterans' benefits respectively, bar a state's attempt to attach those benefits as reimbursement for costs incurred in maintaining the recipient in custody.

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In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 86-6124

GEORGE BENNETT AND EVERETT SHELTON, PETITIONERS

v.

STATE OF ARKANSAS

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF ARKANSAS

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONERS

INTEREST OF THE UNITED STATES

This case involves a State's attempt to attach retirement and disability benefits paid to recipients by the Social Security Administration (SSA) and by the Veterans Administration (VA). Because the benefits at issue are federal funds, the disposition of which is controlled by federal statute and administered by federal agencies, the United States has a substantial interest in the outcome of this case.

STATEMENT

1. Petitioner George Bennett receives $275 per month in Social Security retirement benefits. Petitioner Everett Shelton receives $626 per month in Veterans Administration (VA) disability benefits for a psychiatric disorder that is rated 70% disabling. In 1983, both petitioners were con-

fined in Arkansas state prisons, carrying out sentences for felonies committed some years earlier.[1]

The State of Arkansas in 1983 commenced this action against petitioners in state court, seeking to attach petitioners' federal benefits as reimbursement for the costs of their incarceration. In bringing the action, the State proceeded under the State Prison Inmate Care and Custody Reimbursement Act, Ark. Stat. Ann. §§ 46-1701 *et seq.* (Supp. 1985). That law directs the Attorney General of Arkansas, in any case where a person "has been admitted to a penal facility of the Department of Correction as a prisoner," to attach the prisoner's "estate" as reimbursement for "the expenses paid and to be paid by it on behalf of said person as a prisoner." *Id.* § 46-1704(a). The statute defines this attachable "estate" to mean "any properties, tangible or intangible, real or personal, belonging to or due an inmate confined to an institution of the Department of Correction, including income or payments to such inmate from Social Security, previously earned salary or wages, bonuses, annuities, pensions or retirement benefits, or from any source whatsoever." *Id.* § 46-1702(d).

Bennett opposed the State's claim, arguing that its attempt to attach his Social Security benefits was foreclosed by 42 U.S.C. (Supp. III) 407(a). That section provides that "none of the moneys paid or payable * * * under [the Social Security Act] shall be subject to execution, levy, attachment, garnishment, or other legal process * * *."

[1] We are informed by the Department of Health and Human Services that Bennett was sentenced in 1973 to 21 years incarceration for second-degree murder, and that he was released from prison on December 1, 1984. We are informed by the VA that Shelton was sentenced in 1980 to 15 years' incarceration for theft, and that he was released from prison in 1985.

Similarly, Shelton contended that the State's attempt to attach his VA benefits was inconsistent with 38 U.S.C. 3101(a), which provides that such benefits "shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." The state trial court rejected these contentions, holding that petitioners' federal benefits were subject to the reimbursement statute.[2] Employing a formula provided in the Arkansas law, the trial court accordingly directed that a portion of petitioners' benefits be paid to the State.[3]

The Supreme Court of Arkansas affirmed, one justice dissenting (Pet. App. 1-8). The court acknowledged that "the federal acts would clearly prevail under the Supremacy Clause" if the federal and state statutes were "in conflict" (*id.* at 2). But the court held that "there is no conflict [here] because the federal statutes contain an implied exception to the exemption from legal process when the State provides for the care and maintenance of a beneficiary of social security or veterans 'funds' " (*ibid.*). The court reasoned that both Social Security and VA benefits are paid "for the purpose of assuring the beneficiaries' care and maintenance"; the court therefore concluded that "reimbursement of the State for the care and maintenance of the beneficiaries of these two federal programs is entirely consistent with the thrust of the federal legislation" (*id.* at

[2] The parties stipulated that the funds in question consist of non-commingled federal benefits. Pet. 5. Thus, the State acknowledges that it "seized Veterans Administration benefits and Social Security benefits that were being paid to [petitioners]." Br. in Opp. 2.

[3] The trial court subsequently ordered the assets frozen pending resolution of this action. See Order No. 83-357 (Nov. 21, 1983) (attached as exhibit to petitioners' Affidavit in Support of Motion to Proceed in Forma Pauperis).

2-3). In reaching this conclusion, the Arkansas court distinguished this Court's prior decision in *Philpott* v. *Essex County Welfare Board,* 409 U.S. 413 (1973), which held that 42 U.S.C. 407 bars a State from attaching Social Security benefits as reimbursement for state welfare assistance payments. The Arkansas Supreme Court's distinction was based on the theory that the Social Security recipient in *Philpott* " 'was capable, at least in part, of providing for his own care,' " whereas Arkansas in the instant case was " 'acting *in loco parentis*' " by providing all of the "care and maintenance [of] the beneficiaries" (Pet. App. 4 (citation omitted)).

Justice Purtle dissented (Pet. App. 6-8), finding *Philpott* "controlling" here (*id.* at 6). He explained that Congress "unquestionably, by the clear and express language of [Sections 407 and 3101], intended the recipients to be the owners of such funds and that no one, even judgment creditors, could take these funds away from the beneficiaries" (*ibid.*). And he noted that the "majority opinion * * * is precedent for allowing judgment creditors, who have furnished food, clothing, lodging, and other items of the costs of living to recipients of Veterans benefits and Social Security benefits, to garnish such benefits" (*id.* at 7). He therefore found the majority's holding to be "inconsistent with the clear and unambiguous language of the federal statutes," adding that "[a]ny change in the law should come from Congress" (Pet. App. 6, 8).

SUMMARY OF ARGUMENT

1. The Supremacy Clause invalidates all state laws that conflict with an act of Congress. Here, the conflict between the Arkansas statute and federal law is plain from the language of Sections 407 and 3101. Those provisions expressly bar any attempt to attach Social Security and VA

benefits. Yet the Arkansas law, as interpreted by the Arkansas Supreme Court, *permits* the State to attach those benefits. The Arkansas law and the holding below are thus flatly inconsistent with the congressional scheme.

The Arkansas Supreme Court justified its holding by finding that the federal anti-attachment provisions contain an implied exception that permits attachment of benefits when the State provides for the care and maintenance of the beneficiary. This analysis, however, cannot be reconciled with the plain language of either Section 407 or Section 3101. And its use is foreclosed by this Court's decision in *Philpott* v. *Essex County Welfare Board,* 409 U.S. 413 (1973), which held that Section 407 bars a state from attempting to attach Social Security benefits as reimbursement for state welfare assistance payments; the Court in *Philpott* expressly refused to read an exception into Section 407 for the benefit of a state that was providing for a needy beneficiary. That holding is dispositive here.

2. If there were any doubt about whether Sections 407 and 3101 contain an implied exception for persons who have been imprisoned, it has been conclusively resolved by legislation enacted in 1980 and 1983 that specifically addresses the question of when Social Security and VA benefits may be withheld from such persons. See 42 U.S.C. (Supp. III) 402(x)(1) and 38 U.S.C. 3113(a)(1). That legislation generally requires the federal government to withhold Social Security retirement and disability benefits from incarcerated felons, and substantially reduces the benefits payable by the federal government to veterans who have been imprisoned following the commission of a felony. These enactments reflect Congress's general understanding that it is inappropriate to pay the full amount of Social Security and VA benefits to convicted felons who are imprisoned and whose care and maintenace is thus being provided by the government. But Congress chose to address the problem of the potential windfall to incarcerated felons by eliminating or reducing the federal

government's responsibility to pay benefits to those persons, and not by converting Social Security and VA funds into a subsidy for state prison systems. It is thus clear that a state's attempt to attach benefits paid to an incarcerated person, in circumstances where Congress has specifically chosen to make such benefits available, is flatly inconsistent with Sections 407 and 3101.

ARGUMENT

"There can be no dispute that the Supremacy Clause invalidates all state laws that conflict or interfere with an act of Congress." *Rose* v. *Arkansas State Police,* No. 85-1388 (Nov. 3, 1986), slip op. 2. See *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712-713 (1985); *Gibbons* v. *Ogden,* 22 U.S. (9 Wheat.) 1, 211 (1824)). It is equally clear that the validity of a challenged state law turns on its consistency with the congressional language and purposes. See *California Federal Savings & Loan Ass'n* v. *Guerra,* No. 85-494 (Jan. 13, 1987), slip op. 7; *Allis-Chalmers Corp.* v. *Lueck,* 471 U.S. 202, 208-209 (1985). We believe that the Arkansas statute challenged here, both on its face and as applied by the Arkansas Supreme Court, is invalid under the Supremacy Clause because it is inconsistent with the explicit language of the relevant federal statutes.[4]

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[4] Arkansas is not the only State that permits an action against an inmate's property for the costs of incarceration. At least four other states—Michigan, Ohio, Oklahoma and Tennessee—have similar reimbursement statutes. See Mich. Comp. Laws Ann. §§ 800.401 *et seq.* (West 1982 & Supp. 1987); Ohio Rev. Code Ann. §§ 307.93(D), 341.14, 341.19, 753.02(B), 753.04(B), 753.16(C), 2301.56(B), 2947.19(B) and 2929.15 (Anderson Supp. 1986 & 1987); Okla. Stat. Ann. tit. 57, § 542 (West Supp. 1987); Tenn. Code Ann. §§ 41-21-216 *et seq.* (1982). It also appears that six states—Alabama, Illinois, Kentucky, Missouri, Nebraska and North Carolina—require reimbursement from certain types of prisoners. Ala. Code § 14-6-22 (Supp. 1986) (misdemeanants); Ill. Ann. Stat. ch. 38, para. 1003-4-3 (Smith-Hurd 1982 & Supp. 1987) (juveniles; limited to $200); Ky. Rev. Stat. Ann. § 534.045 (Michie/Bobbs-Merrill 1985) (misdemeanants; limited to $10/day); Mo. Ann. Stat. § 221.070 (Vernon 1983) (county prisoners); Neb. Rev. Stat. § 29-1006 (1985) (prisoners where confinement in a county or local jail is a condition on probation); N.C. Gen. Stat. § 7A-313 (1986) (prisoners awaiting trial). Finally, it appears that eight states—Arizona, Florida, Maine, Maryland, Mississippi, Nevada, North Dakota and Rhode Island—require reimbursement for certain kinds of claims. Ariz. Rev. Stat. Ann. § 31-342 (1986) (costs of escape); Fla. Stat. Ann. § 901.35(1)(b) (West 1985) (medical expenses); Me. Rev. Stat. Ann. tit. 30, § 1712 (Supp. 1986) (medical expenses); Md. Ann. Code art. 27, §§ 678B(b), 636 (1982) (costs of escape and destruction of state property); Miss. Code Ann. § 47-5-119 (1981) (costs of escape); Nev. Rev. Stat. § 209.246 (1985) (costs of property damage, medical treatment, escape, and participation in a riot); N.D. Cent. Code §§ 11-15-07.21, 12-48-20 (1985) (costs of escape and sheriff's cost in boarding prisoners); R.I. Gen. Laws § 42-56-20.1 (1984) (medical care).

1. a. The conflict between the Arkansas statute and federal law is plain from the language of Sections 407 and 3101. The federal statutes respectively provide that Social Security and VA benefits shall not be "subject to execution, levy, attachment, garnishment, or other legal process," and "shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever." 42 U.S.C. (Supp. III) 407(a); 38 U.S.C. 3101(a). But the Arkansas statute directs the State to proceed against a prisoner's "estate," a term that is defined to include "income or payments * * * from any source" (Ark. Stat. Ann. § 46-1702(d) (Supp. 1985)); this definition specifically includes "payments from * * * Social Security" (*ibid.*), and the Arkansas Supreme Court held that the definition reaches VA payments as well (Pet. App. 1, 3). In holding that Social Security and VA benefits could be attached in this way to satisfy the claims of the State as creditor, the Arkansas Supreme Court disregarded Congress's clear directives.

That Congress meant what it said in Sections 407 and 3101 is confirmed by this Court's decision in *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413 (1973). Relying on prior interpretations of Section 3101 (see 409 U.S. at 416-417), the Court there held that the "all-inclusive" language of Section 407 barred a state's attempt to attach Social Security benefits as reimbursement for its welfare assistance payments (*id.* at 415 (footnote omitted)).[5]

The Court saw "no reason why a State, performing its statutory duty to take care of the needy, should be in a preferred position as compared with any other creditor" (409 U.S. at 416). The Court therefore declined to read "an implied exemption" into Section 407 for the State's benefit (*ibid.*). This holding is dispositive here.[6]

b. The Arkansas Supreme Court nevertheless ruled that the federal anti-attachment provisions "contain an implied exception to the exemption from legal process when the State provides for the care and maintenance of a beneficiary," thus fulfilling the purpose of the federal

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[5] The Court explained that Sections 407 and 3101 bar the attachment of any benefits that "retain[ ] the 'quality of moneys' and ha[ve] not become a permanent investment" (409 U.S. at 416 (quoting *Porter* v. *Aetna Casualty & Surety Co.*, 370 U.S. 159, 161-162 (1962)). The funds at issue here—non-commingled benefit payments whose disposition has been frozen pending the outcome of this litigation (see notes 2, 3, *supra*)—surely fall within this category.

[6] The Arkansas Supreme Court distinguished *Philpott* on the ground that " 'there the welfare recipient was capable, at least in part, of providing for his own care' " (Pet. App. 4 (quoting *Department of Health* v. *Davis*, 616 F.2d 828, 830 (5th Cir. 1980)), while "here the State provided the care and maintenance for the beneficiaries" (Pet. App. 4). But nothing in *Philpott* supports such a distinction. Indeed, the recipient in that case received state welfare payments "by reason of permanent and total disability" (409 U.S. at 414); the Court nowhere suggested that the recipient received support from sources other than the State, or that the presence or absence of such support would make any difference to its holding.

benefit programs. Pet. App. 2, 4.[7] This analysis, however, simply cannot be reconciled with the plain language of either federal statute. As the Court put it in *Philpott*, the

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[7] Several other courts have used a similar rationale in holding that states may attach Social Security or VA benefits paid to prisoners or to patients confined to mental hospitals. See *Department of Health* v. *Davis*, 616 F.2d 828 (5th Cir. 1980) (Social Security and VA benefits; incompetent in state hospital); *In re Lewis' Estate*, 287 Mich. 179, 283 N.W. 21 (1938) (VA benefits; incompetent in state hospital); *State Treasurer* v. *Brown*, 125 Mich. App. 620, 337 N.W.2d 23 (1983) (prisoner's Social Security benefits). See also *Auditor General* v. *Olezniczak*, 302 Mich. 336, 4 N.W.2d 679 (1942) (VA benefits; incompetent prisoner in state hospital). Several decisions also have allowed states to obtain reimbursement under a parens patriae rationale—in effect, holding that the State was performing a duty as guardian for an incompetent beneficiary. *In re Bayly's Estate*, 95 Cal. App. 2d 174, 212 P.2d 587 (1949); *In re Bemowski's Guardianship*, 3 Wis. 2d 133, 88 N.W.2d 22 (1958). Other courts have held that states may obtain reimbursement for the costs of supporting patients confined to mental hospitals on the rationale that the state is not a creditor of such a patient. See *Savoid* v. *District of Columbia*, 288 F.2d 851, 852 (D.C. Cir. 1961); *Cruce* v. *Arkansas State Hospital*, 241 Ark. 680, 409 S.W.2d 342 (1966); *Department of Public Welfare* v. *Sevcik*, 18 Ill.2d 449, 164 N.E.2d 10 (1960); *State* v. *Bean*, 159 Me. 455, 195 A.2d 68 (1963); *In re Simpson*, 270 A.D. 902, 61 N.Y.S.2d 529 (1946); *State ex rel. Eastern State Hospital* v. *Beard*, 600 P. 2d 324, 325-326 (Okla. 1979); *In re Bemowski's Guardicnship, supra.* And several courts have held that the protection of Section 3101 is lost upon the death of the veteran, so that the state may obtain reimbursement after death for care that had been rendered to an incompetent veteran. See *In re Todd's Estate*, 243 Iowa 930, 54 N.W.2d 521 (1952); *State* v. *Monaco*, 81 N.J. Super. 448, 195 A.2d 910 (1963); *In re Estate of Pierce*, 492 Pa. 10, 421 A.2d 1065 (1980); *In re Buxton's Estate*, 246 Wis. 97, 16 N.W.2d 399 (1944). But see *In re Estate of Chojnacki*, 397 Pa. 596, 156 A.2d 812 (1959) (State cannot compel satisfaction of its claim for full cost of maintenance of mentally incompetent veteran in state hospital out of proceeds of veteran's pension in hands of guardian), cert. denied, 363 U.S. 826 (1960). Compare *In re Grcich*, 492 Pa. 210, 214-215, 423 A.2d 347, 349 (1980) (guardian of incompetent veteran may not be surcharged for use of veterans' benefits, with consent of the VA and the court, to reimburse State for the ward's care and maintenance), cert. denied, 450 U.S. 997 (1981).

language of Section 407—and thus, necessarily, the virtually identical language of Section 3101—is "all-inclusive" (409 U.S. at 415 (footnote omitted)). Neither provision contains an exception for creditors or for other persons who have provided the recipient with necessary care. And neither provision contains any language suggesting that a state stands on a different footing from any other creditor; indeed, this Court in *Philpott* rejected that very argument (*id.* at 416).

There is thus no reason in this case to doubt that "the ordinary meaning of the language that Congress employed 'accurately expresses the legislative purpose.'" *Mills Music, Inc.* v. *Snyder,* 469 U.S. 153, 164 (1985) (footnote omitted). And where the statutory language is clear, a court's invocation "of the 'plain purpose' * * * at the expense of the terms of the statute * * * prevents the effectuation of congressional intent." *Board of Governors* v. *Dimension Financial Corp.,* 474 U.S. 361, 374 (1986). Indeed, as Justice Purtle noted in dissent, the rationale used by the Arkansas Supreme Court would create a large loophole in Sections 407 and 3101 by permitting suits on the part of "judgment creditors, who have furnished food, clothing, lodging, and other items of the costs of living to recipients of Veterans' benefits and Social Security benefits" (Pet. App. 7). Such a result would scarcely advance the purpose of the federal anti-attachment statutes.[8]

[8] For this reason, the Court has repeatedly given a strict construction to anti-attachment provisions in federal benefits statutes that are virtually identical to those involved in this case. See *Ridgway* v. *Ridgway,* 454 U.S. 46 (1981); *McCarty* v. *McCarty,* 453 U.S. 210 (1981); *Hisquierdo* v. *Hisquierdo,* 439 U.S. 572 (1979); *Wissner* v. *Wissner,* 338 U.S. 655 (1950). And the only recent exception to this line of decisions, *Rose* v. *Rose,* No. 85-1206 (May 18, 1987), provides no support for the holding of the Arkansas Supreme Court. In *Rose,* the Court held that a veteran may permissibly be held in contempt for failing to pay child support when the veteran's VA disability benefits are his only means of satisfying his support obligations. In holding

c. As one might expect from the clarity of the statutory language, there is nothing in the legislative histories of Sections 407 and 3101 that is inconsistent with the statutory texts. Section 407 was enacted in 1935 as part of the original Social Security Act. Act of Aug. 12, 1935, ch. 531, § 208, 49 Stat. 625. The relevant committee reports accompanying this legislation simply paraphrase the language of the statute; neither suggests that Section 407 contains any implied exceptions. See H.R. Rep. 615, 74th Cong., 1st Sess. 21 (1935); S. Rep. 628, 74th Cong., 1st Sess. 32 (1935). When Congress reenacted the provision as part of the Social Security Act Amendments of 1939, ch. 666, § 207, 53 Stat. 1372, it again confirmed, in general terms, that Section 407 "provides that a right to payment under this title shall not be transferable or assignable nor shall any moneys paid or payable be subject to execution or other legal process." H.R. Rep. 728, 76th Cong., 1st Sess. 45 (1939); S. Rep. 734, 76th Cong., 1st Sess. 53 (1939).

Similarly, nothing in the legislative history of Section 3101 suggests that that statute contains any implied exceptions for the benefit of states or other creditors that provide support to the recipients of VA benefits. While two early attempts to protect veterans' benefits from attachment date back to 1873,[9] Congress enacted the substance

that Section 3101 did not bar the contempt citation, the Court found it "critical" that veterans' benefits "are intended to support not only the veteran, but the veteran's family as well" (slip op. 13; see *id.* at 10). Use of the funds to pay child support therefore would "further, not undermine, the federal purpose in providing these benefits" (*id.* at 13). In addition, the Court noted that there is a strong presumption that Congress did not intend to preempt the field of domestic relations (see *id.* at 5). Obviously, neither of those factors is at work in this case.

[9] Section 4747 of the Revised Statutes (1873 ed.) provided as follows:

> No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or

of the present provision in 1935. Act of Aug. 12, 1935, ch. 510, § 3, 49 Stat. 609. The Senate Report accompanying the bill explained that predecessor statutes differed somewhat in the extent of the protection that they afforded beneficiaries, and stated that "[t]he purpose of this new section is twofold; first, to make uniform the law with respect to exemptions granted beneficiaries, and second to clarify the language with respect to such exemptions." S. Rep. 1072, 74th Cong., 1st Sess. 6 (1935). The corresponding House Report stated simply that "amendatory legislation" was needed "in order that the same protection, immunity, and exemption may be provided for all benefits" (H.R. Rep. 16, 74th Cong., 1st Sess. 2 (1935)). Given the broad language of the statute, these explanations certainly suggest that Congress intended Section 3101 to be all-inclusive.[10]

2. In construing Sections 407 and 3101 as including an "implied exception" for prisoners, the Arkansas Supreme Court may have perceived that it would be inequitable to

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equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner.

In 1924, Congress enacted the World War Veteran's Act, 1924, ch. 320, § 22, 43 Stat. 613, which provided, in pertinent part,

> That the compensation, insurance, and maintenance and support allowance payable under Titles II, III and IV [of this Act], * * * shall not be subject to the claims of creditors of any person to whom an award is made * * *; and shall be exempt from all taxation * * *.

[10] The veterans' benefit provision was put in its current form in 1957 (Veterans' Benefits Act of 1957, Pub. L. No. 85-56, § 1001, 71 Stat. 122) and was codified as Section 3101 in the following year. Pub. L. No. 85-857, § 3101(a), 72 Stat. 1229. The relevant committee reports explain that both of these statutes restated existing law. See H.R. Rep. 279, 85th Cong., 1st Sess. 2, 22 (1957); S. Rep. 332, 85th Cong., 1st Sess. 2 (1957); H.R. Rep. 1298, 85th Cong., 2d Sess. 6 (1958); S. Rep. 2259, 85th Cong., 2d Sess. 7 (1958).

allow incarcerated felons, whose care and maintenance is being provided at the State's expense, to keep Social Security and VA benefits whose primary purpose is also to provide for their care and maintenance. Payment of federal benefits in such a case can be said to represent an unjustifiable windfall to the recipient. But if there is such a windfall, there are two ways to cure it. One way would be to allow the State to attach such benefits. As we have explained, this solution flies in the face of Sections 407 and 3101 and is clearly preempted by federal law. Another way would be for the federal government to withhold the payment of benefits in such cases. Under the first solution, the windfall would be eliminated and the federal government would in effect subsidize the states for a portion of the costs incurred in providing for the care and maintenance of incarcerated felons. Under the second solution, the windfall would be eliminated and the savings would inure to the benefit of the Social Security trust fund or the federal treasury.

Significantly, Congress shares the perception that it is improper to pay Social Security and VA benefits to convicted felons whose care and maintenance is being provided by the fact of their incarceration in a state or federal correctional facility. But Congress has expressly adopted the second solution to the potential windfall presented by this situation. In 1980, Congress amended the Social Security Act to provide that disability benefits may not be paid to any person

> for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which * * * is expected to result in such individual['s]

being able to engage in substantial gainful activity upon release and within a reasonable time.

Act of Oct. 19, 1980, Pub. L. No. 96-473, § 5(c), 94 Stat. 2265 (originally codified at 42 U.S.C. (Supp. IV 1980) 423(f)(1)). This restriction was broadened in 1983 to withhold Social Security retirement benefits, as well as disability benefits, from incarcerated felons. Social Security Amendments of 1983, Pub. L. No. 98-21, § 339(a), 97 Stat. 133 (codified at 42 U.S.C. (Supp. III) 402(x)).

Similarly, in 1980 Congress substantially curtailed the VA benefits payable to veterans who have been confined to a federal, state, or local penal institution "for a period in excess of sixty days for conviction of a felony." Veterans' Disability Compensation and Housing Benefits Amendments of 1980, Pub. L. No. 96-385, § 504(a), 94 Stat. 1534 (codified at 38 U.S.C. 3113(a)(1)). Such a veteran with a service-connected disability rated 20% or more disabling generally may not receive more than $68 per month from the sixty-first day of incarceration through the date of the veteran's release (38 U.S.C. 3113(a)(1)(A), cross-referring to 38 U.S.C. (& Supp. III) 314(a)). This reduction in VA benefits does not apply, however, "with respect to any period during which a person is participating in a work-release program or is residing in a half-way house" (38 U.S.C. (& Supp. III) 3113(a)(2)), and any compensation forfeited by the veteran may generally be apportioned to his spouse or children (38 U.S.C. 3113(b)(1) and (2), 3107).

In enacting the amendments just described, Congress clearly anticipated the rationale of the Arkansas Supreme Court—that prisoners have no need for Social Security or VA benefits.[11] But while Congress recognized that pris-

[11] The statutory limitation on payment of VA benefits to incarcerated veterans by its terms does not apply to petitioner Shelton, who was adjudged disabled prior to October 1, 1980, and who committed his felony prior to the October 7, 1980, effective date of the

oners might receive a windfall if they continued to obtain full Social Security or VA benefits while incarcerated,[12] it obviously did not create or sanction any "implied exception" (Pet. App. 2) to the scope of Sections 407 and 3101 of the sort manufactured by the Arkansas Supreme Court. Instead, Congress chose to address that problem by eliminating or reducing those benefits, and allowing the federal government to realize the savings. Congress thereby rejected the notion that Social Security and VA funds could be converted into a subsidy for state prison systems by allowing states to attach the federal benefits that are paid to prisoners.

Indeed, in the same legislation that enacted the restrictions on the payment of retirement benefits to felons, Congress *enhanced* the protection afforded by Section 407 against the attachment of Social Security benefits. That enhancement was accomplished by adding a new Subsec-

statute. See 38 U.S.C. 3113(d). In contrast, the payment of Social Security retirement benefits to Bennett should have been terminated after April 20, 1983, the effective date of the 1983 amendment to the Social Security Act (see § 339(c), 97 Stat. 134 (codified at 42 U.S.C. 402(x))). We are informed by the Department of Health and Human Services, however, that Bennett was erroneously paid benefits through the date of his release from prison in December 1984. The Social Security Administration (SSA) has informed Bennett that it intends to recoup the overpayment; Bennett's request for a waiver of the recoupment claim is pending before SSA.

[12] In providing that Social Security disability benefits should not be paid to persons incarcerated after the commission of a felony, Congress explained in 1980 that "[t]he [Social Security] disability program exists to provide a continuing source of monthly income to those whose earnings are cut off because they have suffered a severe disability. The need for this continuing source of income is clearly absent in the case of an individual who is being maintained at public expense in prison." S. Rep. 96-987, 96th Cong., 2d Sess. 8 (1980). See H.R. Conf. Rep. 98-47, 98th Cong., 1st Sess. 158 (1983). See also H.R. Rep. 96-1155, 96th Cong., 2d Sess. 15-16 (1980) (reduction of VA benefits to incarcerated veterans is a "cost-saving" measure).

tion 407(b), providing that "[n]o other provision of law, enacted before, on, or after the date of the enactment of this section, may be construed to limit, supersede, or otherwise modify the provisions of [Section 407] except to the extent that it does so by express reference to [Section 407]." Social Security Amendments of 1983, Pub. L. No. 98-21, § 335(a), 97 Stat. 130 (codified in 42 U.S.C. (Supp. III) 407(b)).[13]

In its 1980 and 1983 legislation, Congress specifically chose to eliminate or reduce Social Security and VA benefits available to incarcerated felons; any attempt to attach benefits that Congress continued to make available to such persons on the theory that they are not needed by the recipients would fly in the face of this explicit congressional choice. It is thus clear that a state's attempt to attach Social Security or VA benefits, in circumstances where Congress has continued to make such benefits available to an incarcerated person, would run directly counter to Sections 407 and 3101.

[13] Congress's immediate intention in enacting this provision was to overrule several judicial decisions that had construed the Bankruptcy Reform Act of 1978, 11 U.S.C. (& Supp. IV) 101 *et seq.* to permit inclusion of Social Security benefits in a debtor's estate, and that had directed the payment of such benefits to the bankruptcy trustee. See H.R. Rep. 98-25, 98th Cong., 1st Sess. Pt. 1, at 82-83 (1983); H.R. Conf. Rep. 98-47, 98th Cong., 1st Sess. 153 (1983) ("Since 1935, the Social Security Act has prohibited the transfer or assignment of any future social security or SSI benefits payable and further states that no money payable or rights existing under the Act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.").

CONCLUSION

The judgment of the Arkansas Supreme Court should be reversed.

Respectfully submitted.

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AMICUS CURIAE

BRIEF

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In The
Supreme Court of the United States
October Term, 1987

GEORGE BENNETT and EVERETT SHELTON,
Petitioners,

v.

STATE OF ARKANSAS,
Respondent.

On Petition for a Writ of Certiorari to The Supreme Court of Arkansas

BRIEF OF LAWRENCE McDOWELL AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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This brief is filed, pursuant to Sup. Ct. R. 36.2, with the written consent of the parties.

I. STATEMENT OF INTEREST OF AMICUS CURIAE.

Lawrence McDowell is the named representative of a plaintiff class of Social Security recipients whom the State of Washington has committed to its psychiatric institutions. This class has challenged the practice and policy of the state to seize Social Security income as reimbursement for the cost of this commitment.[1] The United States District Court for the Western District of Washington has ruled, among other holdings, that such collection violates 42 U.S.C. § 407(a) and (b). This case is currently pending before the United States Court of Appeals for the Ninth Circuit. *McDowell et al. v. Rahm et al.* (No. 87-4074.)

Federal law exempts the Social Security income of prison inmates from the state's debt collection for reasons that would pre-empt the state's collection of that income from its psychiatric inmates. Accordingly, Mr. McDowell supports the position of the petitioners in this case.

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[1]Mr. McDowell was temporarily and involuntarily committed to a psychiatric institution. During his commitment, the state seized approximately $2,700 of his Social Security income as reimbursement for the costs of his commitment. He represents a class of persons defined as persons whom the State of Washington has committed, presently is committing or will commit to its psychiatric institutions and who have received, presently receive or will receive income pursuant to Title II of the Social Security Act, 42 U.S.C. § 401 et seq. and for which income the state is not the representative payee.

The Social Security income of psychiatric patients, however, is exempt from the state's collection for additional reasons that are unique to the psychiatric context. Even if the Court should adopt the position of the State of Arkansas in this case concerning the Social Security income of prison inmates, its ruling should not govern the exemption of Social Security income that recipients receive during their psychiatric commitment.

II. SUMMARY OF ARGUMENT

The exemption of Social Security income from a state's debt collection is important not only and not even primarily to those Social Security recipients who are in state prison following their conviction of a crime. Persons committed to psychiatric institutions are more likely to receive Social Security income. They are more likely to be eligible because of disability or age. Unlike prison convicts, psychiatric inmates also retain their full eligibility to receive this income during their commitment. Their income is exempt from the state's collection under 42 U.S.C. § 407(a) and (b) for the same reasons that exempt the income of prison inmates.

The Social Security income of psychiatric patients is exempt from the states' collection for reasons that are either unique or especially evident in the context of psychiatric institutions. Whatever limitations on the exemption that may arguably apply to allow the states to collect this income from prison inmates do not apply to allow the collection from psychiatric patients.

Psychiatric patients have unique, critical and basic needs that their commitment not only leaves unfulfilled but also creates. Congress conferred the Social Security entitlement and made the income exempt to address these needs. While prison inmates lose most of their eligibility to receive Social Security income during their imprisonment, Congress allows psychiatric patients to receive their full Social Security entitlement during their commitment. The Court has no reason to infer, as a limitation on 42 U.S.C. § 407, that Congress simultaneously intended patients to lose their income to a state's collection as reimbursement for the cost of that same commitment. Furthermore, Congress, through the Medicare and Medicaid programs, already has delineated the extent to which it will subsidize states for the costs of psychiatric commitments of, among others, Social Security recipients. In these programs, Congress has carefully delineated the extent and conditions of this federal subsidy. Congress did not simultaneously intend to allow states to exceed these limits and circumvent these conditions by seizing, as an additional federal subsidy, the Social Security income that Congress provides separately to psychiatric patients.

The Court should find that the Social Security income of all recipients, including prison inmates, is exempt from the states' collection unless the collection is authorized by any of the several express exceptions to 42 U.S.C. § 407. Should the Court infer an exception that would allow the state's collection in this case, it should also expressly decline to extend the ruling to psychiatric patients, pending its review of a case that fully presents the issue.

III. 42 U.S.C. § 407 PRE-EMPTS THE STATE'S COLLECTION OF SOCIAL SECURITY INCOME FROM PERSONS IT COMMITS TO ITS PSYCHIATRIC INSTITUTIONS.

A. Psychiatric Patients Have Unfulfilled Basic Needs

The Supreme Court of Arkansas in this case based its ruling, in part, on a factual assumption that does not characterize the circumstances of persons committed to state psychiatric institutions. The Arkansas court defended its implied exception to 42 U.S.C. § 407 by finding that the state was fulfilling the prisoners' need for "care and maintenance". Pet. App. 2. The court relied for this proposition on *Dept. of Health v. Davis*, 616 F.2d 828 (5th Cir. 1980). Pet. App. 2, 4. In that case, the Fifth Circuit allowed the State of Florida to collect the Social Security income of a psychiatric patient who had been incompetent since 1952, who "had been in confinement until the present because he is apparently incapable of caring for himself to any degree [and who] had no needs during the period he has been in the Florida State Hospital that were not met by the state". 616 F.2d at 830.

Whatever validity these factual assumptions may have for persons confined in Arkansas's prison system and for the individual patient discussed in *Dept. of Health v. Davis*, they do not characterize the special needs of psychiatric patients generally. Even assuming that such factual assumptions can somehow create an implied exception to 42 U.S.C. § 407, they provide no basis for a similar exception in cases where the record demonstrates

such assumptions to be untrue. *McDowell v. Rahm* is such a case.

The summary judgment record in *McDowell* thoroughly describes basic and compelling needs that psychiatric patients in Washington have, that remain unfulfilled during their commitment, and that their commitment even creates or worsens. This record demonstrates a critical need for the Social Security income. Amicus Curiae McDowell has lodged this record as an Appendix to this brief with the Court Clerk's office for examination.[2] Representative selections are quoted below.

This record shows clearly that state psychiatric hospitals are not utopian dreamlands where basic needs are fulfilled and money is unimportant. Instead, psychiatric patients can have enormous needs for which they require their Social Security income, to the last dollar.

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[2]The record includes the summary judgment of the United States District Court in favor of the plaintiffs, and 30 declarations and affidavits from a complete cross section of mental health professionals and others, including patients, stating the critical need that patients have for their Social Security income, and a Stipulation of Facts. These professionals include clinical staff psychiatrists and psychiatric social workers at the state's hospitals, psychiarists, psychologists and other mental health professionals from leading institutions in the state, directors' of group homes, care facilities, and shelters who must provide for discharged psychiatric patients, the local mental health authorities that must file petitions for committing persons to state institutions, prosecutors responsible for presenting such petitions, and the defense attorneys responsible for opposing them.

1. *Psychiatric Patients Require Their Social Security Income For Needs At The Hospital.*

Psychiatric patients need their Social Security money either to avoid or to recoup losses they suffer because of the commitment itself. A director of a large psychiatric program in Washington describes these needs:

> The Social Security income received during hospitalization is critical for several reasons. First, the income is necessary to recoup financial and other losses that the patient often suffers because of either their mental illness or their institutionalization. People frequently lose their living arrangements upon institutionalization. They lose their lease or their security deposits. They frequently lose personal belongings in the disruption that results from involuntary commitment. Such commitment, usually on short notice, and the accompanying disorientation effectively prevents a person from making arrangements to protect his or her property and other interests. . . . Hospitalization or the mental illness upon which it is based may also mean that a person has lost a livelihood. Such people may be receiving Social Security Disability for the first time and are confronted with the prospect of a substantially reduced standard of living that would bewilder even healthy persons. . . . Under such conditions, the Social Security income can be critical in countering the considerable and potentially devastating deterioration of circumstances associated with institutionalization.

Declaration of MaryAnn Culleeny, pages A.24-25. A staff psychiatrist at the state's hospital agrees:

> First, financial resources can be critical and decisive in allowing such persons to preserve their living arrangements during their institutionalization. Patients often have apartments upon their admission. Some even have mortgages on homes. This is more likely to be the case with recipients of Social Security disability or retirement who have had a working life and who tend to be more settled and stable. Institutionalized patients have a significant advantage if they can retain their residences during their hospitalization that ensures them a place to which they can return. The Social Security income they receive can be their only means of either preserving these residences or, at least, finding new residences upon discharge.

Declaration of Michael Glass, M.D., page A.102

The money would also provide for important needs that institutional life, almost by definition, could not fulfill.

> The money, for example, would enable patients to purchase clothing of their choice to enhance their appearance and self esteem. It would let them buy food, fresh fruit in season, for example, as a welcomed relief from the inevitable monotony of the institutional diet. Money would increase a patient's interaction with the outside world in some important respects by allowing contacts that otherwise would not be possible. Patients, for example, whose friends or relatives live at a distance would be able to provide them with transportation costs to make visitation possible. Patient could also purchase subscriptions or books, which provide a major way they maintain contact with the world in which they ultimately will be expected to live.

Declaration of Bruce Bowersox (Staff Therapist at State Hospital), page A.111

The patients' retention of control over what is usually their sole asset has therapeutic benefits, recounted below by a staff psychiatrist:

> Allowing patients to retain their Social Security money during their hospitalization would also provide some therapeutic advantages. It would allow the patients to retain some responsibility for themselves and thus counter some of the adverse effects of institutionalization. It would also teach some patients the responsibilities and methods of money management that they will need upon discharge. Allowing patients to retain their money would also encourage their therapeutic relationship with the hospital, which they must now regard as a bill collector.

Declaration of Peter G. Bennett, M.D., page A.98.

2. *Psychiatric Patients Need Their Social Security Income To Obtain Their Freedom.*

Unlike most prison sentences, the duration of a psychiatric commitment depends upon the patients' ability to show a fitness for release and the resources for a successful discharge. This takes money.

This is a fact of institutional life obvious to prosecutors:

> The State's seizure of the Social Security income that patients receive during their hospitalization affects directly whether the Court will release them or continue their commitment. In a great many of the cases in which I participate [as prosecutor], the main issue concerns the poverty of the person we are seeking to commit. We do not often commit mentally ill people who have money or other resources. Usually, we commit people because there is no other reasonable, safe, and comfortable place for them to stay. The strongest

> argument that the prosecution can make to the Court in a commitment hearing, in my experience, is that the respondent has no other place to live. . . . If patients at Western State Hospital were allowed to accumulate their Social Security income during their commitment, the resulting sum of money would be a significant factor that the Court will consider when determining whether to renew their commitment.

Declaration of Hiram Groshell, page A.75. The money would also allow a patient or the patient's attorney to arrange for the use of expert testimony that would otherwise be unavailable for the defense. *See*, Declaration of Gerald A. Smith (prosecutor) page A.79.

Defense attorneys have a similar opinion.

> A patient's financial circumstance is one of the few major factors that the Court invariably considers when making a commitment decision. If the attorneys for either the patient or the State do not develop on the record the patient's fiscal resources, the Court will usually inquire.

Declaration of Mark Hanna, page A.81. The sums may also enable a patient to hire a private attorney rather than rely on the often unsatisfactory representation available from the appointed counsel. *See*, Declaration of Diana Carlson (defense attorney), pages A.114-115.

The value of Social Security money in obtaining release is also obvious from a clinical point of view.

> [A]dequate financial assets are essential to allow for a patient's responsible discharge from a psychiatric institution. Adequate housing and services are simply unobtainable without financial resources. A patient has virtually no ability to procure independent living without funds to pay for rental deposits, utility de-

posits, transportation costs, costs of furnishing and the myriad other expenses associated with starting life anew. These costs are made more difficult by the additional barriers that deinstitutionalized persons face in the housing market. Landlords are frequently reluctant to rent to such persons. An accumulation of funds can provide valuable assistance in allowing such persons to overcome discriminatory housing practices in the housing market. Without adequate assets, institutionalized patients who are otherwise prepared for independent living can be forced either to remain in the hospital or to move into a residential facility in the community.

Declaration of MaryAnn Culleeny, page A.26.

> In my experience, the availability of an initial sum of money for these expenses makes discharge planning much easier and allows me to recommend discharge or community placement in my evaluations to the court.

Declaration of Mary Murphy, page A.55. *See Also*, Declarations of Peter G. Bennett, M.D., pages A.96-99; Michael Glass, M.D. pages A.100-106; Craig Spalding, pages A.64-68; Bruce Bowersox, pages A.110-113; Myrn Stewart, M.S.W., pages A.107-109.

3. *The Social Security Income Accumulated At The Hospital Is Necessary To Avoid Recommitment After Discharge.*

A discharged patient's prospects of avoiding a recommitment depend in large measure on how much money they have when they are released. Every dollar is important. This is especially clear to the officials who must file commitment petitions:

> The financial assets a person possesses directly influence transitions into the community and help avoid immediate reinstitutionalizations. Successful discharge planning depends, to a large extent, on available resources to insure adequate living arrangements, clothing, food, and other services. The Office of Involuntary Commitment must intervene in crises that are often aggravated by a person's limited financial resources. . . . The more limited the resources, the greater the chances of rehospitalization.

Declaration of Norman Fournier, page A.32-33. The primary need is housing.

> It has been my experience that patients discharged from Western State Hospital need every available resource to reduce the possibility that they will end up without a place to live relying on shelters. . . . To have any chance of success, discharged patients need every dollar available to pay for first and last month's rent, entry deposits, utility deposits, and the many other costs associated with starting up housing. The Social Security income that they receive while they are at the hospital would be an invaluable asset in providing costs for either new housing or, even more valuable, retaining their prior housing. Without this money, emergency shelters . . . are many people's only alternative to the streets. . . .
>
> The State should allow those of its patients to keep their Social Security money in order to better prepare them for the intense, cruel and, often unsuccessful, competition for adequate housing that confronts mentally ill persons upon discharge from psychiatric institutions.

Declaration of Ken Cole (Director of Washington State's largest shelter), pages A.18-21.

The Social Security money remains vital even for those patients in need of a structured residential placement in the community and who are fortunate enough to

find one. These placements are very few in number. Their expense requires most of a patient's monthly Social Security check; yet they offer privations to their residents that can be serious and debilitating.

> Even if accumulated savings would not have avoided [commitment to a community residential placement], such funds would let my clients mitigate the oppressive and often spartan environment that such placements impose. . . . Without further savings, my clients' prospects of thriving in such placements are significantly diminished. I have represented clients whose inability to remain as [sic] such placements was, at least in part, explainable by the fact that any person with normal sensibilities would have difficulty living in such impoverishment.

Declaration of Mark Hanna, page A.81. Managers of community residential institutions described the needs of their residents who arrived after discharge from the hospital.

> Most significant is the crying need for dental care. Over half of our residents arrive with a serious need for dental care that they are unable to obtain because of lack of funds. . . . The residents are also in continual need of adequate clothing and shoes. They often arrive with insufficient clothing of poor quality. Without any savings of their own, they generally cannot afford clothing for themselves.
>
> The problems of our residents that result from a lack of even modest funds or savings would be greatly alleviated if they were able to accumulate the Social Security income during their hospitalization at Western State Hospital. These savings would make their residence at Century House more beneficial and humane, even in the essentials. It would be hard to overstate the importance of proper dental care and clothing

> and shoes to the residents' general and psychological welfare.

Declaration of Ed Hitchcock, pages A.35-36. The lack of money also prevents residents of community homes from moving on to more independent living arrangements. The costs of doing so are simply insurmountable without an accumulated nest egg of Social Security funds. Declaration of Gary Snow (Administrator of a 64 bed congregate care facility), pages A.60-63.

Psychiatric patients need their Social Security income for reasons that make money valuable to any person. Money creates options. It reduces barriers. It solves problems. Persons who are committed to psychiatric institutions need their Social Security money in order to better confront the special barriers and problems that this world reserves for persons who are indigent and mentally ill. The Court should not infer an exception to the protection their money enjoys under 42 U.S.C. § 407 by assuming that they do not need the money for basic and critical needs.

B. The State's Collection of Social Security Income From Its Psychiatric Patients Defeats Important Congressional Purposes.

1. *Congress Intended Social Security Recipients to Receive Their Income During Their Psychiatric Commitment.*

A state's collection of Social Security income from its psychiatric patients foils Congress's unambiguous intention that these persons should have this income during psychiatric commitments. Psychiatric patients retain

their eligibility for the income as part of Congress's highly detailed delineation of when people become and remain eligible for benefits under the Social Security Act, and when they do not. *See*, 42 U.S.C. § 401 *et seq*. For example, persons confined in penal institutions pursuant to a felony conviction are not eligible for Social Security payments, unless they are actively and satisfactorily participating in a rehabilitative program of a specified nature. 42 U.S.C. § 402(x). Recipients of Supplemental Security Income (S.S.I.) lose their benefits when they reside outside the country. 42 U.S.C. § 1382(s). Social Security income, on the other hand, is not conditioned on residence within the county, unless the recipient is an alien. 42 U.S.C. § 402(t). More to the point, while Social Security benefits continue during psychiatric commitments, S.S.I. benefits do not. 42 U.S.C. § 1382(e)(1)(A). The Court has characterized this scheme as "Congress's deliberate, considered choice". *Schweiker v. Wilson*, 450 U.S. 221, 235 (1981). It is highly unlikely that Congress, while it made the deliberate decision that persons shall receive their Social Security income during their psychiatric commitment, would intend, at the same time, that they would lose that income to the state for the cost of that commitment.

2. *The State's Collection of Social Security Income From Its Psychiatric Patients Defeats Congressional Limits On the Federal Subsidy Provided To The State For Psychiatric Commitments.*

The State's collection of Social Security money from its psychiatric patients defeats Congress's detailed limits on the amount and occasion of federal subsidy available to

the state for the psychiatric commitment of Social Security recipients and others. Congress has delineated in the Medicare and Medicaid programs, in exquisite detail, when and how much it is willing to subsidize the states for the costs of psychiatric commitments. 42 U.S.C. §§ 1395, 1396. The Court has already reviewed the purposes of these limits:

> The residual exclusion of large state institutions for the mentally ill from federal assistance rests on two related principles: States traditionally have assumed the burdens of administering this form of care, and the Federal government has long distrusted the economic and therapeutic efficiency of large mental institutions.

Schweiker v. Wilson, 450 U.S. 221, 242 (1981) (Powell, J., dissenting). The states defeat these limits by collecting patients' Social Security as an additional and unintended federal subsidy on top of the amount that Congress provides to the state on behalf of those same patients.

The Court should regard these limits as evidence of Congressional intent not to provide further subsidy indirectly through the separate Social Security program. The Court has drawn a similar conclusion from analogous federal statutes in *Lawrence County v. Lead-Deadwood School District*, 469 U.S. 256, 105 S.Ct. 695 (1985). In *Lawrence County*, the Court reviewed a scheme whereby Congress had given money to county governments in lieu of local taxes on federal lands. Congress further stipulated that the county shall have the discretion to determine how to spend the money. The Court held that this stipulation pre-empted state law requiring counties to de-

vote a portion of all spending to education. As evidence of Congressional intent, the Court noted that Congress had provided a separate and direct subsidy to the county for educational needs. 105 S.Ct. at 702.

Similarly, Congress did not intend that Social Security, which it gives to psychiatric patients to be used in their discretion, should be diverted to other purposes for which Congress has provided a separate subsidy through the Medicare and Medicaid programs. This is true even though the states, like the school districts in *Lawrence County*, would like to have more.

The state's collection also changes the terms and conditions of the federal subsidy for psychiatric care that Congress is willing to provide. Congress has determined that even the limited amount of subsidy available through the Medicare and Medicaid programs would be inappropriate unless the psychiatric institutions met detailed minimum standards. 42 U.S.C. §§ 1395x(f), 1396d(h); 45 C.F.R. §§ 405.1011 *et seq.* Federal funds, no matter how small, are not to be used to subsidize substandard care. States, however, circumvent this clear Congressional directive by collecting Social Security income from psychiatric patients as a real federal subsidy regardless of the quality of care. The resulting impoverishment of patients can only prolong their commitment in substandard institutions—a result exactly contrary to Congressional policy.

Instead, the Congress intended that its federal subsidy of state psychiatric institutions shall be limited to the occasions and the amounts delineated in the Medicare and Medicaid programs. Congress did not intend the Social

Security income to be available for the support of any person other than the recipient and his or her family.[3] Congress stated this clearly in 42 U.S.C. § 407(a) and (b).

C. The Department of Health v. Davis, Was Wrongly Decided.

In *Department of Health v. Davis*, 616 F.2d 828 (5th Cir. 1980), the court expressly ruled that a state may collect the Social Security income of its psychiatric patients. Other Circuits have reached the opposite conclusion. *Tidwell v. Schweiker*, 677 F.2d 560 (7th Cir. 1982), *cert. den. sub. nom., Pavkovic v. Tidwell*, 461 U.S. 905 (1983); *District of Columbia v. Phillips*, 347 F.2d 795 (D.C. Cir. 1965). The Arkansas court in this case relied directly on *Dept. of Health* to imply an exception to 42 U.S.C. § 407 where the creditor-state was seeking reimbursement for services

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[3]Congress's intent that the states shall not receive the Social Security income provides the opposite circumstance from the scheme the Court reviewed in *Rose v. Rose*, — U.S. —, 107 S.Ct. 2029 (1987). In that case, the Court found that the exemption provision of the veterans' statutes did not pre-empt a state law that allowed a state court to order a recipient of veterans' disability benefits to pay a portion of that income to his children as support payments. Critical to the Court's ruling was its finding that "Congress clearly intended veteran's disability benefits to be used, in part, for the support of veterans' dependents". *Id.* at 2036. There is no analogous Congressional intent that Social Security benefits are to be shared with the state. For reasons stated above, Congress intended just the opposite.

The basis for Justices O'Connor and Stevens' separate opinion concurring in the result of *Rose v. Rose* is also absent in this case. Critical to their view is the "special sanctity" that our "Anglo-American tradition accords . . . to the support obligation". *Id.* at 2040. There is no analogous sanctification for a person's statutory obligation to reimburse the state for the costs of his or her involuntary commitment.

related to "care and maintenance". There is no authority for this proposal.

1. *Dept. of Health v. Davis* Cannot Survive *The Plain Language of 42 U.S.C. § 407 (a) and (b).*

The language of 42 U.S.C. § 407 is unambiguous. It allows no room for the implied exception proposed by the Fifth Circuit.[4]

Congress fortified this clear language after *Dept. of Health*. In 1983, Congress added subpart (b) to § 407:

> No other provision of law, enacted before, on, or after the date of the enactment of this section, may be construed to limit, supersede, or otherwise modify the provision of this section except to the extent that it does so by express reference to this section.

Congress intended to overturn several decisions that, upon the authority of *Dept. of Health*, had obliged the payment of Social Security income to the recipient's trustee in bankruptcy for distribution. *E.g., Matter of Treadwell*, 699 F.2d 1050, 1053 (11th Cir. 1983); *United States v. Devall*,

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[4]Applicable rules of statutory construction prevent an inferential limitation on 42 U.S.C. § 407. First, the courts interpret the Social Security Act liberally in favor of the recipient's entitlement to receive and to keep the income. *E.g., Damon v. Secretary of H.E.W.*, 557 F.2d 31, 33 (2d Cir. 1977), ("In practical terms, the principles mean that, when a Social Security Act provision can reasonably be construed in favor of one seeking benefits, it should be so construed."); *Williams v. Califano*, 590 F.2d 1332, 1334 (5th Cir. 1979); *Rosenberg v. Richardson*, 538 F.2d 487, 490 (2d Cir. 1976). The Court has made the same point about exemption provisions in particular. *Porter v. Aetna Casualty and Surety Co.*, 370 U.S. 159, 162 (1962). Second, attachment and garnishment authority must be interpreted narrowly. *Joe v. Marcum*, 621 F.2d 358, 361 (10th Cir. 1980).

704 F.2d 1513, 1517 (11th Cir. 1983). See H.R. Rep. 98-25. 98th Cong., 1st Sess. Pt. 1, at 82-83 (1983); H.R. Conf. Rep. 98-47, 98th Cong., 1st Sess. 152 (1983).

Under § 407(b), there is no limitation on the exemption of Social Security funds unless Congress expressly directs. It has done so in some circumstances.[5] It has not done so in any circumstances that would permit the state's collection in this case or in *Dept. of Health*.

2. *Dept. of Health v. Davis* Cannot Survive *Philpott v. Essex County Welfare Board*

The Court, in fact, reviewed and rejected the proposed limitation on § 407 in *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973). In that case, the New Jersey Supreme Court allowed the state to collect Social Security income as reimbursement for the cost of welfare payments because they filled the basic needs that the Social Security income was intended to insure. The Court unanimously rejected this proposal. Other federal courts have followed suit. *E.g., Dionne v. Bouley*, 757 F.2d 1344 (1st Cir. 1985), (Social Security income is exempt from collection for a rent debt.); *Harris v. Bailey*, 675 F.2d 614

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[5]*E.g.*, 42 U.S.C. § 659(a) makes Social Security money attachable for the enforcement of child support or alimony debts. 42 U.S.C. § 404 allows the Social Security Administration to recoup overpayments of Social Security monies from subsequent Social Security checks. Congress provided an analogous provision for the recoupment of Supplemental Security Income (S.S.I.) overpayments. 42 U.S.C. § 405(j) allows the Social Security Administration to pay benefits to another as the recipient's representative payee. 42 U.S.C. § 1383(g)(1) allows payment of a recipient's S.S.I. benefits to a state as reimbursement for interim assistance it provided to the recipient while his or her S.S.I. application was pending.

(4th Cir. 1982), (hospital care); Cf. *American Train. Serv., Inc. v. Veteran's Administration*, 434 F. Supp. 988 (D.N.J. 1977), (Veteran's tuition benefits are exempt from collection of a tuition debt.)[6]

3. *Dept. of Health v. Davis Misconstrues The Nature of The Social Security Entitlement*

A proposal that conditions the exemption of Social Security income upon a showing of unfulfilled basic needs misconstrues the nature of the Social Security entitlement. Persons receive this income, not because they are needy, but because they contributed enough during their working lives to receive it upon their disability or retirement. Unlike S.S.I., Social Security is an insurance program "payable regardless of the need of the recipient. . . ." *Mathews v. Castro*, 429 U.S. 181, 185 (1976). Conditioning the value of this entitlement on the recipient's showing of unfulfilled needs would change it in fundamental ways that Congress did not contemplate.

IV. CONCLUSION

The Court should overturn the decision of the Arkansas Supreme Court. If the Court affirms that decision, it should expressly decline to apply its ruling to instances

[6]The Arkansas court and the court in *Dept. of Health* even cite authority that the Court in *Philpott* acknowledged and rejected or that pre-date *Philpott*. E.g., *In re Lewis' Estate*, 283 N.W. 21 (Mich. 1938). Pet. App. 3.

where the state collects Social Security income of persons whom it has committed to a psychiatric institution.

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